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John Silvasi
04/07/03 09:55 AM

To: Joann Allman/RTP/USEPA/US@EPA
cc:
Subject: to OMB: * 8-hr 03 NAAQS Implementation Proposal--Current Redline/strikeout version

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----- Forwarded by John Silvasi/RTP/USEPA/US on 04/07/03 09:54 AM -----

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03/07/03 09:20 AM

To: Amy_L._Farrell@omb.eop.gov
cc: Arthur_G._Fraas@omb.eop.gov, Denise Gerth/RTP/USEPA/US@EPA, Lydia Wegman/RTP/USEPA/US@EPA, Tom Helms/RTP/USEPA/US@EPA, Jim Ketcham-Colwill/DC/USEPA/US@EPA, Kevin McLean/DC/USEPA/US@EPA, Jan Tierney/DC/USEPA/US@EPA, Sara Schneeberg/DC/USEPA/US@EPA, Dave Sosnowski/AA/USEPA/US@EPA
Subject: * 8-hr 03 NAAQS Implementation Proposal--Current Redline/strikeout version

3/7/03
Note to Amy Farrell, OMB:

Per our discussion with yourself, Art Fraas, and representatives of several federal agencies, I am enclosing a redline/strikeout version of the proposed rule for implementation of the 8-hour ozone standard. The comparison is against the version dated 12/26/02 that was originally sent to OMB in early January. Two formats are included--Wordperfect and Adobe Acrobat.

Notes on this version:

- It does not contain revised text yet for anti-backsliding and transition from the 1-hour to the 8-hour standard we are still developing the language for these sections. I have removed the previous text to avoid confusion.
- It does not contain revised text yet for addressing long-range transport; we are still developing the language for these sections.
- It does not yet contain the discussion of the effect of the classification scheme on CMAQ funding; we hope to have that later today or early next week.
- Some of the new text–mostly edits, new and revised tables--has not actually been reviewed by legal counsel; thus, there may still be additional revisions.
- Revisions other than those that respond to comments we have received from OMB and the federal agencies have also been made based on internal discussions. They can be characterized as follows:
  - Most substantive:
    - Changes to the approach for subpart 1 RFP

- Expression of preference for more flexible 15% VOC ROP option.
- Removal of the more stringent option on ROP for situation where the 8-hr nonattainment area is larger than and includes a 1-hour ozone nonattainment area.

- Less Substantive:
  - Integrated Framework Table --Retention of only one option per implementation element
  - addition of a table describing conformity and NSR/PSD for various situations regarding the 1-hr to 8-hr standard transition.

- Non-substantive:
  - relocation of the summary description of the proposed rule elements (was an appendix; now located before the actual proposal)
  - addition of a glossary of acronyms, abbreviations & terms
  - a number of corrections of typos, etc.


8_HR_O3_NPR_030703_RLSO. 8_HR_O3_NPR_030703_RLS

I am also attaching per conversation yesterday the draft supplemental document that describes the options that EPA considered but is not proposing (we had sent this previously, but I understand some of the participants on yesterday's call may not have seen it). This document may also need revision after we have revised the language relating to anti-backsliding and transition from the 1-hr to the 8-hr standard.


addl_options_not_prop5. addl_options_not_prop5.

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Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard."

U.S. Environmental Protection Agency
Office of Air Quality Planning and Standards
Research Triangle Park, NC
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INTRODUCTION

In a separate notice of proposed rulemaking, EPA is proposing two discrete alternative frameworks to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). The EPA is proposing this rule so that States may know which statutory requirements apply for purposes of developing State implementation plans (SIPs) under the Clean Air Act (CAA or Act) to implement the 8-hour ozone NAAQS. The intended effect of this rule is to provide certainty to States regarding their planning obligations such that States may begin SIP development upon designation and classification for the 8-hour standard.

Following are the principles that guided EPA in the development of these proposed frameworks to implement the 8-hour ozone standard: 1) In order to protect public health, provide incentives for expeditious attainment of the 8-hour ozone standard and avoid incentives for delay; 2) Provide reasonable but expeditious attainment deadlines; 3) Have a basic, straightforward structure that can be communicated easily; 4) Provide flexibility to States and EPA on implementation approaches and control measures while ensuring that the implementation strategy is supported by the CAA; 5) Emphasize national and regional measures to help areas come into attainment and, where possible, reduce the need for those local controls that are more expensive than national and regional measures; and 6) Provide a smooth transition from implementation of the 1-hour ozone NAAQS to 8-hour ozone NAAQS implementation.

As noted in that proposal, EPA originally intended to implement the 8-hour ozone standard in a more flexible approach under subpart 1 of part D, Title I of the CAA. This would have allowed areas more flexibility to determine whether to regulate NO_x, VOC or both to address ozone nonattainment.

As also noted in that proposal, however, the Supreme Court determined that an approach that ignored subpart 2 was unreasonable. In structuring a proposed implementation rule, EPA has tried to stay as close as possible to the principles noted above, particularly with regard to seeking flexible ways for States to address their 8-hour ozone problems by avoiding mandatory measures that may be unreasonable for an area. EPA has spent a large amount of time investigating possible legal theories and policy options to find flexibility within the Supreme Court's decision. EPA has also had the benefit of ideas and recommendations from many interested stakeholders, who also have spent much time developing their own theories and ideas. Based on these efforts, EPA believes that it has developed options for an implementation program that is workable under the constraints of the CAA. Nonetheless, EPA recognizes that those constraints will still require a number of areas to adopt certain control measures that may not be as effective as others in achieving the 8-hour ozone standard. In the proposed rule, EPA is soliciting any further ideas for addressing this situation.

To describe EPA's proposed frameworks for implementing the 8-hour ozone standard, it was necessary to examine all the components or elements of the process used to implement the standard. Therefore, the issues and options that EPA is proposing that deal with the aspects of

preparing SIPs for the standard are presented individually in the proposed rulemaking. In the proposal, EPA is soliciting comments on the approach for each of the elements and on two distinct frameworks that combine options from each of the implementation elements.

The proposed rulemaking describes only those options or approaches EPA is proposing. The EPA considered a number of other options and approaches for some of the implementation elements, some of which were suggested in oral or written comments at the public meetings EPA held on implementing the 8-hour standard, or in written comment, or other stakeholder meetings or conversations. These other options that EPA considered but that are not being proposed are described in this document, which is being made available in the docket for the rulemaking.

ISSUE: How will EPA reconcile Subparts 1 and 2? How will EPA classify nonattainment areas for the 8-hour standard? What attainment dates would apply?

Other Options EPA considered

At the three public meetings EPA held in March and April of 2002, EPA presented four classification options. As a result of the feedback we received at those meetings and in written comments, and after further deliberation, our proposal above includes two of the four public meeting options, and we have combined the concept of one of the other four into the incentive feature proposed above. Under the one option not being proposed at all, EPA would have used an area's most recent 1-hour ozone design value at the time of designation to establish the area's classification for the 8-hour NAAQS. While this option would have allowed for use of the classification table as set forth in section 181, EPA concluded (and many members of the public agreed) that this approach was not representative of each area's 8-hour ozone problem.

At the public meetings and in written comments, several other options were suggested, which EPA considered in formulating this proposal; these are discussed below.

Classification based on the most recent 1-hour ozone design value. This option would implement subpart 2 classification provision in table 1 as written, using an area's current 1-hour ozone design values rather than their 8-hour design values. Under this option, some areas (i.e., those whose 1-hour design values were .121 ppm or greater) would be classified under subpart 2. However, more than half the hypothetical nonattainment areas would be covered under subpart 1, since their design values fall below .121 ppm, the minimum value in table 1. This option would provide flexibility in implementation for those areas covered under subpart 1. An area's 1-hour design value, however, may not reflect the area's 8-hour O_3 problem and would produce some inequities (e.g., aN area covered under subpart 1 may have a higher 8-hr ozone design value than another area that is marginal or even moderate and covered under subpart 2). This option received mostly adverse comment at the public meetings due to the fact that 1-hour design values do not reflect 8-hour ozone problems in many cases.

Implement the 8-hour standard in a sequential manner. Under this option, areas that are currently designated nonattainment under the 1-hour standard would continue to implement their SIP under subpart 2 until they reached a certain trigger. Two potential triggers were suggested–either attainment of the 1-hour standard or implementation by the area of all measures under subpart 2. Only after the appropriate trigger would the area be classified for the 8-hour standard and subject to planning obligations for the 8-hour standard. All areas would be classified under subpart 1 for the 8-hour standard, although the "textually applicable" subpart 2 requirements would continue to apply for the implementation of the 8-hour standard. (A commenter provided an example of "textually applicable" subpart 2 requirements: those requirements that have not been exhausted and can be applied without rewriting them to make them comport with a revised standard, such as the requirements for ozone transport under section 184.) EPA believes that the CAA as interpreted by the Supreme Court, does not permit such an interpretation. Under section 107 of the CAA (and under other statutory amendments and provisions), EPA is given a limited amount of time to designate nonattainment areas under the 8-hour ozone standard. Once an area is designated nonattainment under the 8-hour standard, subpart 1 provides areas with a limited amount of time to develop and submit an implementation plan. The option proposed by the commenter fails to account for this timing. Moreover, the Supreme Court clearly stated that it interprets subpart 2 to provide classifications for areas designated nonattainment for the 8-hour NAAQS. Under this approach, no areas would be classified subpart 2 for the 8-hour NAAQS.

Classify all areas under subpart 2 and place a higher percentage of 8-hour ozone nonattainment areas into higher classifications to reflect the fact that the 8-hour standard is more stringent than the 1-hour standard. The commenter did not suggest a mechanism for determining which areas would fall into each classification. One of the options being proposed (Option 1) would place all 8-hour ozone NAAQS nonattainment areas in subpart 2 based on the percentage an area's design value is above the standard (the same percentages used in the section 181 table for the 1-hour design values in relation to the 1-hour standard). EPA does not believe that it is appropriate to place areas in higher classifications simply to reflect the fact that the 8-hour standard is more stringent. Rather, as Congress did in 1990, EPA believes it is more appropriate to classify areas based on the difficulty of that area to attain the NAAQS and the time it takes to attain, as indicated in a relative sense by the area's design value. Thus, if an area should be able to adopt controls to attain within 6 years after designation, it should not be classified as severe.[1]

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[1]This commenter also recommended that the category names for the classification scheme (in subpart 2) should be reflective of the public health significance of the ozone problem. EPA does not believe that the classification scheme should be the primary way of informing the public of the quality of the air in a particular area, and that there are other mechanisms for doing that such as the air quality index (AQI) program or the general requirement for public notification under section 127 of the CAA. As an illustration, even CAA section 107 requires designation as nonattainment nearby clean air areas that contribute to another area's nonattainment. In these cases, the nonattainment designation for the contributing part of the area would not be an accurate characterization of the quality of the air for public information purposes for that part of

Another commenter suggested an approach that would have a similar result – revise table 1 to reflect the spread of 8-hour design values that exist at the time of designations and classifications. In other words, table 1 reflected the spread of 1-hour ozone design values for nonattainment areas at the time the Amendments were enacted –from just above 0.12 ppm to well above 0.280 ppm. In 2000, the nonattaining 8-hour ozone design values range from above 0.08 ppm to 0.146 ppm. For the reasons provided above, EPA does not believe that this approach reflects the level of control needed for areas to attain the 8-hour NAAQS nor the time it will take the areas to attain the standard. Looking back at the 8-hour design values that existed at the time EPA originally classified areas under the 1990 CAAA, the 8-hour design values ranged to 0.205 ppm for the period 1986-1988 and 0.192 ppm for the period 1987 to1989. (Therefore, for example, there would have been one area classified extreme if the 8-hour standard existed at that time.)

Only Areas Currently Subject to Subpart 2 Would Be Classified Under Subpart 2. Another commenter suggested that only areas that are currently designated nonattainment for the 1-hour ozone NAAQS be subject to subpart 2 and all other "new" areas be subject only to subpart 1. In practice, this approach would produce similar, though not identical, results to EPA's option 2 in which EPA will rely on an area's most recent design value for the 1-hour standard in determining whether it should be subject to subpart 1 or subpart 2. We believe that the Option 2 provides a more balanced method for determining which areas are subject to the planning requirements of subpart 2 because it considers actual air quality data rather than simply looking to see whether an area is currently under the subpart 2 scheme or not.

Distribute Areas in the Subpart 2 Classification Based on Distribution In 1990. One commenter suggested that we use the same distribution of areas in each classification that existed for the designations and classifications that occurred immediately after the 1990 CAA Amendments. Under this option, for example, if 10 percent of the areas designated nonattainment were classified as severe-15 in1990, then 10 percent of the current nonattainment areas would be placed in that classification. We do not believe that this comports with Congressional intent. We find no evidence that Congress intended to include a specific percentage of areas in each of the 5 subpart 2 classifications following the 1990 Amendments. Rather, we believe Congress looked closely at the air quality in the areas, determined which areas would need more controls – and ths more time – to reach attainment, and grouped the areas accordingly. Thus, Congress required areas that needed more time to attain to adopt more stringent controls. Similarly, EPA believes it is appropriate to link the classifications to how far above the standard an area's design value is. As a general rule, EPA believes this is the best indication of the level of control that will be needed to bring an area into attainment and the time it will take such area to attain the standard. Moreover, if a State believes that an area will need more time to attain because the

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the nonattainment area, so any classification of that area would also not accurately characterize the health problem for that part of the nonattainment area.

classification does not accurately reflect the area's ozone problem, the State can request EPA to give that area a higher classification.

Other methods for translating section 181's Table 1 from 1-hour to 8-hour ozone design values:

Other translations were considered but in EPA's opinion do not have the same degree of consonance with the intent of Congress when it enacted subpart 2. EPA is therefore not proposing these per se, but in the notice of proposed rulemaking, EPA is soliciting comment on the merits of them. If there is sufficient interest in any of these translations, EPA will consider publishing a supplemental proposal on them.

–Establishing a relationship between the 1-hour and 8-hour monitored values or design values based on measured air quality data:

Any attempt to derive a scientific relationship between 1-hour values and 8-hour values would result in a relationship that does not fit all situations.[2]

The other problem with trying to establish a relationship between monitored 1-hour and 8-hour ozone levels for purposes of translating the classification table is that what might be a better fit for one area may not be as good a fit for other areas. Also, EPA does not believe that Congress intended different threshold schemes to apply for different areas. However, using a relationship derived from data for the entire country would also likely have more scatter than data derived for individual areas.

In addition, the effect of using a relationship between historical 1-hour and 8-hour ozone data to establish the translation of table 1 would likely result in a larger number of areas in the higher subpart 2 classifications, which would further limit an area's flexibility in crafting control measures appropriate to the area's problems.

EPA therefore believes there is no obvious "correct" technical method for performing the translation. Thus, EPA believes it is best to rely on what appeared to be Congress's intent in

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[2]For instance, a best-fit curve could be established between 1-hour and 8-hour ozone levels based on historical air quality data through a variety of means. Even a cursory examination of the 1-hour and 8-hour design values for each county, or each hypothetical nonattainment area shows a rather large scatter (large standard deviation). In other words, areas with the same 1-hour design values may have a range of 8-hour design values. Rather than using the area's design values, one could try to establish a relationship between daily maximum 1-hour values with daily maximum 8-hour values on a county or monitor basis. Even if these values were ranked and paired by ranking (i.e., the highest 1-hour value with the highest 8-hour value, etc.) the degree of scatter would be less, but would still not reflect how the data actually occur in reality.

developing a proper translation for purposes of applying section 181's Table 1 to the 8-hour ozone standard. EPA solicits comment, however, on other ways of interpreting Congressional intent and on the methods described in this proposal. It should be noted that the translation being proposed (based on the percentages above the standard) does establish a de facto relationship between 1-hour values and the 8-hour values that is not based on measured air quality values.

–Construct a revised classification table (Table 1 of subpart 2) based on the 8-hour ozone values used in EPA's Air Quality Index (AQI). The AQI[3] levels are designed to trigger immediate actions that will keep an area from reaching short-term levels that approach the level considered to cause significant harm to the health of persons.[4] The levels in the AQI are as follows:

AQI Value	Category	8-hr (or 1-hr) O3 concentration (ppm)
0 to 50	Good	up to 0.064
51 to 100	Moderate	0.065 up to 0.084
101 to 150	Unhealthy for Sensitive Groups	0.085 up to 0.104
151 to 200	Unhealthy	0.105 up to 0.124
201 to 300	Very unhealthy	0.125 up to 0.374
301 to 500	Hazardous	0.0405 up to 0.604 (1-hr)

These levels were not designed to classify areas for purposes of developing longer range plans for achieving the ozone NAAQS. For one thing, the values provide are not design values (i.e., they are not designed to show a direct relationship between the air quality of an area in relation to the standard itself, which is based upon data over a 3-year period), but are short-term exposure values (either single 8-hour or single 1-hour concentrations), intended to provide thresholds on a realtime basis for health advisories to the general public or rapid control action by the air pollution control agency. Therefore EPA does not consider them appropriate for the purpose of classifying areas to establish longer-range emission control programs and establish attainment dates.

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[3]The current rule on the AQI was published August 4, 1999 (64 FR 42530). The rule is codifed at 40 CFR 58.50. Additional information on the AQI is found at http://www.epa.gov/airnow/aqibroch/aqi.html#5 .

[4]40 CFR 51.151 sets forth the significant harm levels for certain criteria pollutants. The level for ozone is 1,200 micrograms per cubic meter ($\mu g/m^3$) or 0.06 ppm, 2-hour average.

ISSUE: How will EPA transition from the 1-hour to the 8-hour standard?

Other Options EPA considered

EPA considered an option in which EPA would revoke the 1-hour ozone standard at the time EPA finds the area's motor vehicle emissions budget under the 8-hour standard to be adequate. EPA's transportation conformity rules allow EPA to find a nonattainment area's emissions budget adequate before actually approving the attainment demonstration and/or reasonable further progress provisions of the SIP on which the budget is based. Of course, EPA can only find a budget adequate if it has a reasonable expectation that the attainment demonstration and/or reasonable further progress provision is adequate. This approach would result in revocation of the 1-hour standard sometime after the timing in the first option described above as the adequacy process occurs only after the area has submitted a SIP as required in response to its designation and classification. Conformity would apply under both standards from 1 year following the effective date of the nonattainment designation for the 8-hour standard and until a conformity budget for the 8-hour ozone attainment demonstration and/or reasonable further progress provision is determined adequate. At the time of the adequacy determination, EPA would revoke the 1-hour standard.

This approach raises a practical concern about implementing both standards simultaneously. For instance, transportation conformity would apply for both standards for some period of time. Until a new budget is established under the 8-hour standard, the area would have to meet not only the current budget for the 1-hour SIP, but also either pass the build/no-build or the no-greater-than baseline conformity test, which generally may be more difficult for an area to meet. Also, for 8-hour ozone nonattainment areas that are larger than – but encompass – 1-hour ozone nonattainment areas, the transportation conformity requirements would likely have to be met individually for both standards–for the 8-hour standard in the larger area and for the 1-hour standard in the area that comprised the 1-hour ozone nonattainment area; this would add complexity to the process.

Because of this practical concern, EPA is not proposing the above approach. A number of commenters at EPA's public meetings and in written comments favored this approach.

In addition, EPA presented other options at the public meetings and received suggestions for additional options, but did not believe these would ensure a smooth transition from the 1-hour standard to the 8-hour ozone standard, particularly in light of concerns about conformity.

- An option whereby EPA would revoke the 1-hour standard at the time of 8-hour O_3 attainment/nonattainment designation would ensure a quick transition to the 8-hour standard, but there would be a gap in conformity coverage during the 1-year grace period after designation of the 8-hour ozone standard.
- An option whereby EPA would revoke the 1-hour standard for all purposes at the time EPA determines that the area meets the 1-hour O_3 NAAQS (after 8-hour O_3 designation).

This approach also would create a situation under which conformity would apply to both standards for areas that remain covered by the 1-hour standard after the first year following nonattainment designations under the 8-hour standard. As noted in the proposal, however, EPA is also soliciting comment on this approach, even though we are not proposing it.

- An option whereby EPA would revoke the 1-hour standard at the time of approval of 8-hour O_3 SIPs (for 8-hour O_3 nonattainment areas), which would ensure that attainment plans and control measures would be in place under the 8-hour standard before the 1-hour standard is revoked. EPA believes this option is unreasonable because it would result in conformity and new source review applying simultaneously for both standards for a number of years as SIPs generally would be due around three years following designation and EPA approval could take up to 18 months.
- An option whereby EPA would revoke the 1-hour ozone standard at the time the State SIP rules are enforceable at the State level with some preliminary assessment by EPA that the SIP is approvable. While, compared with the previous option, this option would reduce the amount of time that conformity and NSR would apply simultaneously for the two standards, EPA believes that it is unreasonable for the same reason.

ISSUE: Should prescribed requirements of Subpart 2 apply in all 8-hour nonattainment areas classified under subpart 2, or is there flexibility to apply equivalent measures, or drop some requirements altogether if in certain narrowly defined circumstances they are determined to be inappropriate?

EPA considered the following options and obtained input on them at the three public meetings.

Option 1. Assume no changes can be made to the statutory requirements of subpart 2.

Option 2. Identify a legal justification to allow areas covered under subpart 2 to substitute measures that will provide equivalent ozone reductions.

Option 3. Identify a legal justification to allow EPA to determine on a case-by-case basis which of the mandatory control measures under subpart 2 can be waived by the State in preparation of its attainment demonstration. The area would still have to provide controls sufficient to attain the standard by the attainment date for its classification.

Option 4. Review each of the individual control requirements in subpart 2 to determine what, if any flexibility may be provided for that specific requirement (e.g., can the 15 percent VOC reduction requirement be deemed to have been met for areas that have already achieved a 15 percent reduction in VOC reductions for the 1-hour standard? For serious and above areas, can EPA determine that onboard vapor recovery is in widespread use and thus, under section 202(a)(6) revise or waive the stage II requirement for those areas?)

In the notice of proposed rulemaking, EPA is proposing that subpart 2 requirements would apply to all areas covered under subpart 2 consistent with the area's classification. In that respect EPA's proposal is similar to the former Option 1 described above. EPA is proposing also to

consider allowing case-by-case waivers of specific subpart 2 requirements when sufficient evidence is presented that absurd results that would occur through compliance with the specific subpart 2 requirement. In that respect, EPA's proposal is similar to the former options 2 and 3 above.

With regard to Option 4, EPA has considered whether the 15 percent rate of progress requirement for VOC emission reductions for the first 6 years after a nonattainment designation could be interpreted to require only 3 percent reduction per year of either VOC or NO_x or both if the area had already accomplished such reductions for the period 1990 to 1996. EPA is proposing this option in the section on reasonable further progress. The EPA is still evaluating whether the stage II vapor recovery provisions in the Clean Air Act (sections 182(b)(3) (which applies to serious and above nonattainment areas) and 184 (b)(2) (which applies to the Ozone Transport Region) can be waived or revised to account for the increasing use over time of onboard refueling vapor recovery (ORVR) systems.

ISSUE: How will EPA address transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?

EPA had considered alternative options for several issues related to transport.

Issue: Who should conduct the analysis to evaluate the extent, causes and solution to transport of ground-level ozone and its precursors?

One option that EPA considered is a combination of EPA and State activities. EPA would perform regional scale modeling to evaluate the impacts of regional transport and identify measures (e.g,. state-level emission caps or other requirements) sufficient to eliminate a State's significant contribution to areas in downwind States (as in option 1). As part of this analysis, EPA would make a determination as to whether these steps resolve the transport problem. If not, the EPA would identify areas for which additional analyses, which may include photochemical grid modeling, will be needed as part of the State's attainment demonstration SIP. EPA would issue technical guidance on analytical techniques and analyses still needed to address the remaining portion of the transport problem. These analyses would include assessment of the States' emissions impacts on areas in downwind States and could include identification of additional control measures needed to eliminate the significant contributions to areas in downwind States. EPA guidance will provide a description of the role of transport, how ozone is formed in the atmosphere, chemistry, mixing turbulence and transport, models to review transport, and guidance describing ways to evaluate transport and address downwind influence on downwind areas. This option may require States to work together as described in the sections on attainment demonstrations. In developing an attainment SIP for their local area, states would be allowed to rely on anticipated upwind reductions to be achieved by measures based on the regional scale modeling. Because states are working together, they should agree on both the

need for upwind emission reductions and on adopting controls in sufficient time for the downwind areas to meet their attainment dates.

Another option that EPA considered but is not proposing is that States would, either alone or by forming multi-state groups, perform the regional scale modeling to assess each State's contribution to other areas and identify equitable control measures throughout the region that eliminate their significant contribution. In developing an attainment SIP for their local area, states would be allowed to rely on anticipated upwind reductions to be achieved by measures based on the regional scale modeling.

The EPA did not propose either of these options for several reasons. One reason is that the significant amount of time it would take for States to organize and perform the necessary modeling would likely preclude having usable results in the timeframes needed. Another reason is the fact that there would likely be significant differences from region to region in assessment of transport and the manner in which it would be addressed. EPA believes that the approach discussed in the proposed rulemaking would be more effective in addressing transport.

Issue: Can the nonattainment designation process be used to address transport?

EPA has considered, but is not proposing, an option that would rely solely on the air quality designations process in section 107 of the CAA to address regional transport. For example, some commenters suggested at the public meeting that EPA could designate large enough nonattainment areas to include both the violating and contributing areas and coordinate attainment dates within the area such that the upwind contributing and downwind nonattainment areas reflect the same attainment date. This approach could result in very large nonattainment areas. The EPA is not proposing this option for several reasons. First, EPA believes that this approach does not square with the definition of a nonattainment area in section 107(d)(1)(A) which provides for including "nearby" areas that contribute to nonattainment. The EPA does not believe that this provision was intended to address long-range transport. Second, as a policy matter, EPA believes it would not be productive to subject broad areas of the country to nonattainment programs such as new source review and conformity.

For similar reasons, EPA also is not considering establishing new ozone transport regions as provided under section 126(a). While some commenters suggested this approach at the public meeting, other participants strongly opposed the approach.

ISSUE: What requirements for reasonable further progress (RFP) should apply under the 8-hour ozone standard?

The EPA considered, but is not proposing, alternative options for several of the RFP issues as follows:

For subpart 2 areas, should the initial 15 percent RFP requirement be limited to VOC emissions?

Other options that EPA considered

A number of commenters wanted EPA to provide a more flexible approach for RFP. One recommendation was to allow more NOx emission reductions to be substituted for VOC emission reductions for the 15 percent requirement. Another recommendation was to allow areas to reduce emissions of whatever precursor (i.e., VOC and/or NOX) and by whatever amount is necessary to reach attainment by attainment date. In other words, the commenter was suggesting that EPA not apply the ROP provisions in section 182 and not prescribe what RFP means under subpart 1. EPA has not been able to identify a legal rationale to accommodate such recommendations in light of statutory requirements.

What baseline year should be required for the emission inventory for the RFP requirement

Other Options EPA considered

EPA presented other options for the baseline year at the public meetings. One option would be to use 1990–the year specified in the CAA. Those present at the public meetings had a mixed response regarding the use of 1990 as the baseline year of emission inventory. Use of 1990 as the baseline would allow States to take credit for measures they adopt and implement after 1990. However, 1990 would be an older inventory and does not reflect current circumstances. Moreover, there are newer, more refined tools and techniques used to determine inventories. Some commenters have indicated that developing a good 1990 base year inventory would be technically difficult for those areas that were not nonattainment for the 1-hour standard and thus had not developed inventories for that year. Others indicated it would be possible for some areas to develop a good 1990 emissions inventory. Also suggestions were made to consider use of some other year, e.g., 1999 since it is a relatively recent year with an updated quality-assured emission inventory. EPA rejected these other options because the 2002 base year appeared to be the most appropriate year in light of anticipated availability of current information at the time States will be preparing the RFP provisions of their implementation plans.

How should the RFP requirements be implemented for areas designated for the 8-hour ozone standard that entirely or in part encompass an area that was designated nonattainment for the 1-hour ozone standard?

Other Options EPA considered

The other option EPA considered was to develop a new baseline and new RFP emission reduction targets for the entire area, but in addition retain current RFP for the 1-hour ozone NAAQS.

This option would allow the entire area to make progress toward attainment of the 8-hour ozone NAAQS while preserving the adopted ROP plan for the current 1-hour standard nonattainment area. It would establish two ROP targets—one for the area that was subject to the

1-hour standard and one for the entire 8-hour ozone nonattainment area. This option was not selected since it appeared unnecessary to ensure progress toward attainment.

ISSUE: Will EPA be contemplating incentives for areas that want to take early action for reducing ozone under the 8-hour standard?

EPA considered a transitional classification as a means for encouraging States to take early action for implementing the 8-hour ozone NAAQS. EPA does not consider this approach to be feasible.

On July 16, 1997, the President issued a directive to EPA on the implementation of the revised air quality standards for ozone and PM. On November 17, 1998, EPA issued draft guidance for implementing the revised ozone and PM NAAQS and the regional haze program consistent with the Clean Air Act and the President's Directive ("Implementation of Revised Air Quality Standards for Ozone and Particulate Matter," 62 FR 38421, July 18, 1997). Consistent with the Presidential Directive, the draft guidance provided for the creation of a transitional classification for certain areas. This classification was intended to be made available only to areas with air quality meeting the1-hour ozone standard, but not meeting the more stringent 8-hour ozone standard. At that time, the transitional classification was the primary element of EPA's flexible implementation approach for ozone. This classification encouraged cleaner air sooner, responded to the fact that ozone is a regional as well as a local problem, and eliminated unnecessary planning and regulatory burdens for State and local governments.

Since the November 17, 1998, guidance was issued, however, the legislative authority that EPA proposed to use as the basis for implementing the 8-hour standard was challenged, calling into question the legality of the transitional classification as a means of providing flexible implementation for areas covered under subpart 2, Part D, Title I of the CAA. (The legislative authority for the nonattainment area provisions is found in the Part D, Title I of the CAA. Subpart 1 contains general requirements for SIPs for all nonattainment areas; subpart 2 provides more specific requirements for ozone.) In February 2001, the Supreme Court found EPA's implementation approach unreasonable, concluding that EPA could not ignore subpart 2 when implementing the 8-hour standard. Whitman v. American Trucking Assoc., 121 S.Ct. 903.

The Clear Skies legislation introduced in July 2002 provides for a transitional designation for certain areas that would allow flexibility in implementing the 8-hour ozone NAAQS. This approach is discussed elsewhere in this notice.

~~12/26/02~~3/6/03a xxx

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-]

RIN 2060-AJ99

Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this document, EPA is proposing two discrete frameworks to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). The EPA is proposing this rule so that States may know which statutory requirements apply for purposes of developing State implementation plans (SIPs) under the Clean Air Act (CAA) to implement the 8-hour ozone NAAQS. The intended effect of ~~this proposed~~the rule is to provide certainty to States regarding their planning obligations such that States may begin SIP development upon designation and classification for the 8-hour standard. Following are the principles that guided EPA in the development of these frameworks to

implement the 8-hour ozone standard: 1) To protect public health, provide incentives for expeditious attainment of the 8-hour ozone standard and avoid incentives for delay; 2) To provide reasonable but expeditious attainment deadlines; 3) To have a basic, straightforward structure that can be communicated easily; 4) To provide flexibility to States and EPA on implementation approaches and control measures while ensuring that the implementation strategy is supported by the CAA; 5) To emphasize national and regional measures to help areas come into attainment and, where possible, reduce the need for those local controls that are more expensive than national and regional measures; and 6) To provide a smooth transition from implementation of the 1-hour ozone NAAQS to implementation of the 8-hour ozone NAAQS. In addition, EPA intends to clarify the role of Tribes in implementing the 8-hour ozone NAAQS.

The two frameworks EPA is proposing are based on two different classification options, which affect the requirements that would apply to individual nonattainment areas. The EPA prefers classification Option 2 because it provides more flexibility to States and Tribes as they address their unique air quality problems. This is likely

to allow some areas to attain the standard at a lower cost. However, EPA is also soliciting comments on Option 1, in part because it is less complex and may be easier to communicate, as well as on other ways to classify nonattainment areas.

This proposed rulemaking does not propose to establish attainment/nonattainment designations nor does it address the principles that will be considered in the designation process; EPA has already issued guidance on the principles that States should consider in making designation recommendations, and EPA will issue further guidance separate from this rulemaking if appropriate. Finally, EPA is not taking comment at this time on appropriate tests under the 8-hour standard for demonstrating conformity of Federal actions to SIPs. The EPA intends to conduct separate rulemaking on this issue prior to designating areas under the 8-hour ozone standard.

DATES: Comments must be received on or before (**insert date 60 days from date of publication**). The EPA has scheduled hearings on this proposal for **[dates and places]**.

ADDRESSES: All comments should be submitted to Docket #A-

2001-31. When mailing documents, comments, or requests to the EPA Docket Center through the U.S. Postal Service, please use the following address: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, N.W., Room: B108; Mail Code: 6102T, Washington, DC 20460. To mail comments or documents through a courier service, the mailing address is: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, N.W., Room: B108; Mail Code: 6102T, Washington, DC 20004. The normal business hours are 8:30 a.m. to 4:30 p.m. Comments can be submitted to the address above, by fax (202) 566-1741, or by e-mail to A-and-R-Docket@epa.gov. The voice telephone number is (202) 566-1742. In addition, the EPA has placed a variety of materials regarding implementation options on the web site: http://www.epa.gov/ttn/naaqs/ozone/ozonetech/o3imp8hr/o3imp8hr.htm. While this web site is not an exact duplicate of the Air Docket, EPA has placed materials that we have generated and materials that have been submitted in an electronic format on the web site.

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental

Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5666 or by e-mail at: silvasi.john@epa.gov or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-02, Research Triangle Park, NC 27711, phone number (919) 541-5550 or by e-mail at: gerth.denise@epa.gov.

SUPPLEMENTARY INFORMATION

This notice uses a number of acronyms and terms that are defined when first used. A list appears in Appendix D for convenience.

OUTLINE

3. How do attainment dates apply to Indian country?

4. How will EPA establish attainment dates for areas classified as marginal under the "incentive" feature proposed under the classification section or areas covered under subpart 1 with a requested attainment date of 3 years or less after the designation date?

C. How will EPA transition from the 1-hour to the 8-hour standard?

~~1. Background.~~

~~2. Timeframe for revoking the 1-hour standard.~~

~~3. Proposed approach for timing of revocation of 1-hour ozone standard.~~

~~4. Other Approaches Considered~~

~~D. How will EPA implement the CAA's provisions for anti-backsliding?~~

~~1. How will the CAA's anti-backsliding provisions work regarding current CAA requirements under the 1-hour ozone standard?~~

~~2. Alternative Approaches~~

~~3.~~ [THIS SECTION AND THE NEXT BEING RESTRUCTURED]

D. How will EPA ensure that the ~~public knows which areas must continue provisions under the 1-hour SIPs under the anti-backsliding provisions?~~applicable requirements of the CAA continue to apply under the mechanism selected for transitioning from the 1-hour to the 8-hour standard?

E. Should prescribed requirements of subpart 2 apply in all 8-hour nonattainment areas classified under subpart 2, or is there flexibility in application in certain narrowly defined circumstances?

1. Background.

2. Approach being proposed.

3. Other Approaches Considered

F. What is the required timeframe for obtaining emission reductions to ensure attainment by the attainment date?

G. How will EPA address long-range transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?

1. Background.

2. The EPA's Proposed Approach.
3. Other Concerns about Transport.
4. Other Options Considered.

H. How will EPA address transport of ground-level ozone and its precursors for rural nonattainment areas, multi-State nonattainment areas, areas affected by intrastate transport, and international transport?

1. Rural transport nonattainment areas.
2. Multi-State Nonattainment Areas.
3. Intrastate transport
4. International Transport.
5. Additional ways of addressing transport
6. State-Tribal Transport

I. How will EPA address requirements for modeling and attainment demonstration SIPs when implementing the 8-hour ozone standard?

1. Multi-pollutant assessments (one-atmosphere modeling).
2. Areas with early attainment dates.
3. Areas with later attainment dates.
4. Modeling guidance.
5. Mid-Course review.

J. What requirements for reasonable further progress should apply under the 8-hour ozone standard?

1. Background.
2. Proposed Features in General.
3. For subpart 2 areas, should the initial 15 percent RFP requirement be limited to VOC emissions?
4. What baseline year should be required for the emission inventory for the RFP requirement
5. Should moderate areas be subject to prescribed additional RFP requirements prior to their attainment date?
6. What is the timing of the submission of the ROP plan?
7. How should CAA restrictions on creditable measures be interpreted? Which national measures should count as generating emissions reductions credit toward RFP requirements?
8. For areas covered by subpart 1 instead of subpart 2, how should the RFP requirement be structured?

9. How should the RFP requirements be implemented for areas designated for the 8-hour ozone standard that entirely or in part encompass an area that was designated nonattainment for the 1-hour ozone standard?

10. Should EPA use the RFP requirement to address an upwind State's responsibility under section 110(a)(2)(D), which requires that the SIP provide for preventing a significant contribution to a downwind jurisdiction's nonattainment situation?

11. Will EPA's "Clean Data Policy" continue to apply under the 8-hour standard for RFP?

12. How will RFP be addressed in Tribal areas?

13. How will RFP targets be calculated?

K. Are contingency measures required in the event of failure to meet a milestone or attain the 8-hour ozone NAAQS?

1. Background.

2. Proposal

L. What requirements should apply for RACM and RACT for 8-hour ozone nonattainment areas?

1. Background.

2. Proposed approach for RACT in general for areas covered under subpart 2.

3. Proposed approach for RACT in general for areas covered under subpart 1.

4. Proposed approach for previous source-specific major source RACT determinations.

5. Proposed approach for NO_x as an ozone precursor.

6. Proposed approach for RACM.

7. Proposed submission date for RACT and RACM requirements.

M. How will the section 182(f) NO_x provisions be handled under the 8-hour ozone standard?

N. What requirements for transportation conformity should apply under the 8-hour ozone standard?

1. What is transportation conformity?

2. Why is EPA discussing transportation conformity in this proposed rulemaking?

3. Are any changes being made to transportation conformity in this proposed rulemaking?

4. When does transportation conformity apply to

8-hour ozone nonattainment areas?

5. How does the 1-year grace period apply in metropolitan areas?

6. How does the 1-year grace period apply in isolated rural areas?

7. Does conformity apply for the 1-hour ozone standard once the 1-hour ozone standard is revoked?

8. Would transportation conformity apply if motor vehicles are an insignificant portion of an area's air quality problem?

9. What are EPA's plans for amending the conformity rule to address the 8-hour ozone standard?

10. What impact will the implementation of the 8-hour ozone standard have on a State's Transportation Conformity SIP?

O. What requirements for general conformity should apply to the 8-hour ozone standard?

1. What is the purpose of the general conformity regulations?

2. How is the general conformity program currently structured?

3. Who runs the general conformity program?

4. How does an agency demonstrate conformity?

5. General conformity regulations revisions for the 8-hour ozone standard.

P. How should the NSR Program be implemented under the 8-hour ozone NAAQS?

1. Background

2. Nonattainment NSR under the 8-hour ozone standard

3. Under what circumstances is a transitional program needed during the interim period?

4. Elements of the Appendix S transitional program.

5. Will a State be required to assure that the increased emissions from a new major source do not cause or contribute to a violation in a nearby nonattainment area before it issues a preconstruction permit under Appendix S?

6. What happens at the end of the interim period?

7. What is the legal basis for providing this

transitional program?

8. How should the NSR requirements be implemented for new 8-hour ozone areas that encompass the old 1-hour ozone nonattainment areas after EPA revokes the 1-hour ozone standard?

9. NSR Option to Encourage Development Patterns that Reduce Overall Emissions--Clean Air Development Communities.

10. Tribal Concerns.

Q. How will EPA ensure that the 8-hour ozone standard will be implemented in a way which allows an optimal mix of controls for ozone, $PM_{2.5}$, and regional haze?

1. Could an area's 8-hour ozone strategy affect its $PM_{2.5}$ and/or regional haze strategy?

2. What guidance has EPA provided regarding ozone, $PM_{2.5}$ and regional haze interaction?

3. What is EPA proposing?

R. What emission inventory requirements should apply under the 8-hour ozone NAAQS?

S. What guidance should be provided that is specific to Tribes?

T. What are the requirements for OTRs under the 8-hour ozone standard?

U. Are there any additional requirements related to enforcement and compliance?

V. What requirements should apply to emergency episodes?

W. What ambient monitoring requirements will apply under the 8-hour ozone NAAQS?

X. When will EPA require 8-hour attainment demonstration SIP submissions?

1. Background.

2. Option being proposed.

VII. Proposal of integrated frameworks using various options

VIII. Other Considerations.

A. Will EPA be contemplating incentives for areas that want to take early action for reducing ozone under the 8-hour standard?

1. What are the Ozone Flex Guidelines for the 1-

Appendix ~~E--Comparison~~C--Comparison of Transitional NSR and Early Action Compact Programs
Appendix D-Glossary of Terms and Acronyms
Appendix E--Application of Conformity, New Source Review and Prevention of Significant Deterioration under Various Transition Cases

I. WHAT IS THE 8-HOUR OZONE PROBLEM AND EPA'S STRATEGY FOR ADDRESSING IT?

A. What is the ozone standard and the health problem?

Ground-level ozone pollution is formed by the reaction of volatile organic compounds (VOC) and nitrogen oxides (NO_x) in the atmosphere in the presence of heat and sunlight. These two pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, including on-road and off-road motor vehicles and engines, power plants and industrial facilities, and smaller "area" sources.

In 1979, EPA promulgated the 0.12 ppm, 1-hour ozone standard, (44 FR 8202, February 8, 1979). On July 18, 1997, EPA promulgated a revised standard of 0.08 ppm, measured over an 8-hour period (i.e., the 8-hour standard). In general, the 8-hour standard is more protective of public health and more stringent than the 1-hour standard, and there are more areas that do not meet the 8-hour standard

than there are areas that do not meet the 1-hour standard. At the time that EPA promulgated the revised 8-hour standard, EPA also promulgated a rule providing for the phase-out of the 1-hour standard, [62 FR 38856 (codified at 50.9(b)]. That rule provided that the 1-hour standard would no longer apply to an area once EPA determined that the area had attained the 1-hour standard.[1]

Ozone can irritate the respiratory system, causing coughing, throat irritation, and/or uncomfortable sensation in the chest. Ozone can reduce lung function and make it more difficult to breathe deeply, and breathing may become more rapid and shallow than normal, thereby limiting a person's normal activity. Ozone also can aggravate asthma, leading to more asthma attacks that require a doctor's attention and/or the use of additional medication. In addition, ozone can inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue, irreversible reductions in lung function, and a lower

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[1]Due to the continued litigation over the 8-hour standard, EPA revised 40 CFR 50.9(b) in July 2000, to limit its authority to revoke the 1-hour standard until such time as the 8-hour standard became fully enforceable and no longer subject to legal challenge. (65 FR 45182, July 20, 2000).

quality of life if the inflammation occurs repeatedly over a long time period (months, years, a lifetime). People who are particularly susceptible to the effects of ozone include children and adults who are active outdoors, people with respiratory disease, such as asthma, and people with unusual sensitivity to ozone.

More detailed information on health effects of ozone can be found at the following web site: http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html .

~~In addition, there has been more recent research that reinforces health effects research which was used to support the 1997 decision to set the 8-hour ozone standard and suggests more serious health effects of ozone than had been known when the 8-hour ozone standard was promulgated. Some of this more recent research is summarized in Appendix A.~~

The focus of today's proposed rule is implementation of the revised 8-hour ozone air quality standard issued by EPA in 1997, including the transition from implementation of the 1-hour standard to implementation of the 8-hour standard.

B. What is the geographic extent of the 8-hour ozone problem?

Although the nation as a whole has made significant progress since 1970 in reducing ground-level ozone pollution (sometimes called "smog"), ozone remains a significant public health concern. At present, unhealthy ozone levels--exceeding the 8-hour standard--occur over wide geographic areas including most of the nation's major population centers. These areas include much of the eastern half of the United States and large areas of California.

The geographic extent of the 8-hour ozone problem is expected to shrink between now and 2020 due to existing regulatory requirements. The EPA estimates that existing control measures (e.g., Federal motor vehicle standards, EPA's regional NO_x rule known as the NO_x SIP Call, and local measures already adopted under the CAA) will dramatically reduce the number of areas[2] not attaining the 8-hour ozone

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[2]See discussion below on how EPA has developed hypothetical nonattainment areas for purposes of analysis of this proposed rulemaking and options. Modeling analyses for projections to 2007 are found in: U.S. Environmental Protection Agency, Office of Air and Radiation, Technical Support Document for the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Air Quality Modeling Analyses. EPA420-R-00-028. December 2000. Located at: http://www.epa.gov/otaq/regs/hd2007/frm/r00028.pdf.

Information on the modeling analyses for projections to 2010

standard--from 122 in 2000 (using data from 1998, 1999, and 2000), to 51 in 2007, to 30 in 2010 and 13 in 2020. See Table 1 below.

The total population living in areas that EPA has hypothesized may be designated nonattainment is also projected to decline over time--from 178 million in 2000, to 143 million in 2007, to 116 million in 2010, to 82 million in 2020. However, the number of people living in areas with excessive ozone levels remains high for the foreseeable future because existing control programs alone will not eliminate unhealthy ozone levels in some of the —nation's largest population centers.

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and 2020 are found in "Technical Addendum: Methodologies for the Benefit Analysis of the Clear Skies Initiative." September 2002. This can be found at the following web site: http://www.epa.gov/clearskies/Tech_adden.PDF. Results are summarized in "Human Health and Environmental Benefits Achieved by the Clear Skies Initiative." July 1, 2002. http://www.epa.gov/clearskies/CSIhealth_env_benefits7-01.ppt .

TABLE 1

8-HOUR OZONE HYPOTHETICAL NONATTAINMENT AREAS AND POPULATION (projected by modeling)

Note: The number of areas[3] projected to each future year is based on modeled projections without consideration of application of new emission control measures that would be required under the SIP process for areas designated nonattainment for the 8-hour NAAQS.

	2000	2007	2010	2020
Number of areas-base case (without Clear Skies Act controls)	122	51	30	13
Number of areas with Clear Skies Act controls	122	51	24	12
Population (millions)-base case (without Clear Skies Act controls)	178	143	116	82.4
Population (millions)-with Clear Skies Act controls	178	143	103	82.1

[3]See discussion below on how EPA has developed hypothetical nonattainment areas for purposes of analysis of this proposed rulemaking and options.

Based on information in EPA's Trends Report issued in 2002,[4] over the past 20 years, national ambient ozone levels decreased 18 percent based on 1-hour data and 11 percent based on 8-hour data. Between 1982 and 2001, emissions of VOCs decreased 16 percent. During that same time period, emissions of NO_x increased 9 percent. For the period 1982 to 2001, the downward trend in 1-hour ozone levels seen nationally is reflected in every broad geographic area in the country. The Northeast and West exhibited the most substantial improvement, while the South and North Central regions experienced the least rapid progress in lowering ozone concentrations. Similar to the 1-hour ozone trends, all regions experienced improvements in 8-hour ozone levels between 1982 and 2001 except the North Central region, which showed little change during this period. Again, the West and Northeast have exhibited the most substantial reductions in 8-hour ozone levels for the past 20 years.

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[4]~~The 2002 Trends Report may be found at~~Latest Findings on National Air Quality--2001 Status and Trends. U.S. EPA; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Research Triangle Park, NC. September 2002. EPA 454/K-02-001. Found at: http://www.epa.gov/airtrends/ozone.html.

C. What is EPA's overall strategy for reducing ozone pollution?

The EPA's overall strategy for achieving the 8-hour ozone standard is based on the structure outlined in the CAA. The Act gives both the States and EPA important roles in implementing national air quality standards.

States have primary responsibility for developing and implementing SIPs that contain local and in-State measures needed to achieve the air quality standards in each area. The EPA assists States by providing technical assistance and guidance, including guidance on control measures. In addition, EPA sets national emissions limits for sources such as motor vehicles. Where upwind sources contribute to downwind problems in other States, EPA can also ensure that the upwind States address these contributing emissions or regulate them federally, where a State fails to act to address them.

The EPA intends to work closely with States and Tribes to use an appropriate combination of national, regional and local pollution reduction measures to meet the standard expeditiously and in a cost-effective manner.

1. The SIP system

States use the SIP process to identify the emissions sources that contribute to the nonattainment problem in a particular area, and to select the emissions reductions measures most appropriate for that area, considering costs and a variety of local factors. Under the CAA, SIPs must ensure that areas reach attainment as expeditiously as practicable. However, other programs, such as Federal controls, also provide reductions, and States may rely on those reductions when developing their attainment plans.

The SIP system for nonattainment areas is an important component of the CAA's overall strategy for meeting the 8-hour ozone standard, but it is not the only component. As noted below, the CAA also requires or anticipates the use of national rules that will reduce emissions and help achieve cleaner air.

2. National rules

For the States to be successful in developing local plans showing attainment of standards, EPA must do its part to control the sources that are more effectively and efficiently controlled at the national level and to ensure that interstate transport is addressed through SIPs or other means. The EPA already has issued key national and regional

control requirements for motor vehicles, power plants and other sources that will enable many areas to meet the 8-hour standard in the near term.

Current emissions standards for new cars, trucks and buses are reducing motor vehicle emissions of VOCs (sometimes referred to as hydrocarbons) and NO_x as older vehicles are retired. Other rules are reducing emissions from several categories of non-road engines. The EPA's Tier 2 motor vehicle emission standards, together with the associated sulfur in gasoline requirements, will provide additional benefits nationally within the time period of many 8-hour ozone nonattainment areas' anticipated attainment dates, (February 10, 2000, 65 FR 6698). Also, EPA published the heavy duty diesel rule on January 18, 2001 (66 FR 5002), which will contribute to reductions needed to meet the 8-hour ozone standard in areas with later attainment dates.

In the eastern U.S., dramatic reductions in NO_x emissions from power plants and large industrial sources will occur by May 2004 under EPA's rules to reduce interstate transport of ozone pollution in the East. These rules are the NO_x SIP Call, published October 27, 1998 (63

FR 57356), and Section 126 Rule, published May 25, 1999 (64 FR 28250).

Also, under the requirements of section 183(e) of the CAA, EPA is contemplating either Federal rules or control techniques guidelines (CTGs) for controlling VOCs from 15 additional categories of consumer and commercial products. The CTGs assist States in determining required controls for facilities in nonattainment areas. The 15 categories are in addition to six CTGs already published under this provision of the CAA (consumer products, architectural coatings, automobile refinishing coatings, aerospace coatings, wood furniture coatings, and shipbuilding and ship repair coatings). These additional rules or CTGs are expected to be completed over the next few years.

Control measures targeting hazardous air pollutants (HAPs) also result in control of VOCs and, in some cases, NO_x. Under section 112 of the CAA, EPA was required to identify and list categories of industrial facilities that emit significant quantities of one or more of 188 HAPs and establish maximum achievable control technology (MACT) standards for each category of sources. Because most of the organic HAPs are also VOCs, in many cases, control of

organic HAP emissions also achieves reductions in VOC emissions. For stationary reciprocating internal combustion engines, control of organic HAP emissions by non-selective catalytic reduction (NSCR) would also achieve NO_x emission decreases.

Rules for most of the listed MACT categories have been promulgated. Although many of the earlier promulgated rules have already resulted in emissions reductions of VOCs, the more recent rules will not begin achieving reductions until the compliance date, which is generally 3 years following promulgation. Therefore, the amount of reductions achieved through control of HAPs that are VOCs will continue to grow over the next several years.

The EPA sees the potential for significant further emissions reductions from power plants and non-road engines at the national level. The Administration has proposed nationwide legislation, the "Clear Skies Act" (CSA), to reduce power plant emissions of NO_x nationwide, as well as sulfur dioxide and mercury. [THE FOLLOWING SENTENCE WILL BE REVISED] In the absence of, ~~and/or~~or in conjunction with, this legislation, EPA ~~would foresee~~is also contemplating the development of an interstate transport rule to reduce SO_2

and NO_x emissions. The EPA also is contemplating a national rule that would significantly reduce NO_x emissions from non-road diesel-powered equipment. These non-road sources constitute an important fraction of the NO_x emissions inventory.

D. What is the relationship between the SIP system proposed and the proposed Clear Skies legislation?

A basic issue for implementation of the 8-hour ozone standard is how to treat areas projected to attain the standard based on existing controls. The EPA believes that an appropriate balance should be struck between two goals: avoiding requirements for unnecessary additional controls that increase cost, and ensuring expeditious attainment to protect public health.

Today's proposal contains options that strive to balance these two goals under the authority of current law. The proposal contains two options for classifying areas under the 8-hour ozone standard. Both options contain features to ensure that areas projected to attain in the near term based on existing requirements are not subject to additional prescribed control obligations. Of course, these areas would be subject to the same requirements that apply

to all areas designated nonattainment, such as new source review (NSR) and conformity. However, the EPA is considering options for providing for more flexible implementation of these requirements, as described elsewhere in this proposed rulemaking, and is actually proposing an option related to NSR in this proposed rulemaking.

The proposed Clear Skies legislation takes a different approach to requirements for areas projected to attain through controls that are already mandated. The proposed CSA includes a provision that would create a new designation of "transitional" for areas that are projected to attain by 2015 based on existing controls, or with the aid of additional SIP controls approved by December 31, 2004. The proposed CSA provides that areas designated transitional would be subject to the requirements of the prevention of significant deterioration program for new sources, which applies in attainment areas. Because "transitional" would be the designation for such areas, they would not be required to adopt additional control measures that would be required for areas designated nonattainment, nor would they be subject to conformity provisions. The provision includes a mid-course check to ensure that the area remains on-track

toward attainment. In case of failure to attain by 2015, the area would be re-designated as a nonattainment area and would be subject to the nonattainment area requirements. The EPA expects that most areas currently exceeding the 8-hour ozone standard could qualify for this designation, in many cases, without further local controls.

However, because the Clear Skies legislation has not been enacted, EPA has not considered it in this proposed rulemaking. Should the Clear Skies legislation be enacted into law, EPA would conduct further rulemaking on implementation of the 8-hour ozone standard under such law, if necessary.

II. WHAT IS THE BACKGROUND ON THE 8-HOUR OZONE STANDARD?

A. What is the legal background?

On July 18, 1997, EPA revised the ozone NAAQS (62 FR 38856) by promulgating an ozone standard of 0.08 parts per million (ppm) as measured over an 8-hour period. At that time, EPA indicated it believed that the 8-hour ozone NAAQS should be implemented under the less detailed requirements of subpart 1 of part D of title I of the CAA rather than the more detailed requirements of subpart 2. Various industry groups and States challenged EPA's final rule promulgating

the 8-hour ozone NAAQS in the U.S. Court of Appeals for the District of Columbia Circuit.[5] In May 1999, the Appeals Court remanded the ozone standard to EPA on the basis that EPA's interpretation of its authority under the standard-setting provisions of the CAA resulted in an unconstitutional delegation of authority. American Trucking Assns., Inc. v. EPA, 175 F.3d 1027, 1034-1040 (ATA I) aff'd, 195 F.3d 4 (D.C. Cir., 1999)(ATA II). In addition, the Court held that the CAA clearly provided for implementation of a revised ozone standard under subpart 2, not subpart 1. Id. at 1048-1050.[6] The EPA sought review of these two issues in the U.S. Supreme Court. In February 2001, the Supreme Court held that EPA's action in setting the NAAQS was not an unconstitutional delegation of authority. Whitman v. American Trucking Assoc., 121 S.Ct. 903, 911-914 (2001) (Whitman). In addition, the Supreme Court held that

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[5] On July 18, 1997, EPA also promulgated a revised particulate matter (PM) standard (62 FR 38652). Litigation on the PM standard paralleled the litigation on the ozone standard and the court issued one opinion addressing both challenges. However, issues regarding implementation of the revised PM NAAQS were not litigated.

[6]The Court addressed a number of other issues, which are not relevant here.

the D.C. Circuit incorrectly determined that the CAA was clear in requiring implementation only under subpart 2, but determined that EPA's implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. Id. at 916-919. Specifically, the Court noted EPA could not ignore the provisions of subpart 2 that "eliminate[] regulatory discretion" allowed by subpart 1. Id. at 918. The Court also identified several portions of the CAA's classification scheme under subpart 2 that are "ill-fitted" to the revised standard and remanded the implementation strategy to EPA to develop a reasonable approach for implementation. Id. Because the D.C. —Circuit had not addressed all of the issues raised in the underlying case, the court remanded the case to the D.C.— Circuit for disposition of those issues. Id. at 919. On March 26, 2002, the D.C. Circuit Court rejected all remaining challenges to the ozone and fine particle ($PM_{2.5}$) standards. American Trucking Assoc. v. EPA, 283 F.3d 355 (D.C. Cir. 2002) (ATA III). With that ruling, EPA began to move forward with programs to protect Americans from the wide variety of health problems that these air pollutants can cause, such as respiratory illnesses and premature death.

The implementation rule proposed herein will provide specific requirements for State, local, and Tribal air pollution control agencies to address as they prepare implementation plans to attain and maintain the 8-hour NAAQS. Each State with an area that is not attaining the 8-hour ozone NAAQS will have to develop--as part of its SIP--emission limits and other requirements to attain the NAAQS within the timeframes set forth in the CAA.[7] Tribes with jurisdiction over Tribal lands that are not attaining the 8-hour ozone standard could voluntarily submit a Tribal implementation plan (TIP) but would not be required to do so. However, in cases where a TIP is not submitted, EPA, working with the Tribes, would have the responsibility for planning in those areas.

B. What ~~is the~~ technical ~~background of~~work influenced EPA's implementation approach?

In developing its original approach for implementation of the 8-hour standard, EPA considered input from a variety of technical information sources and experts. The EPA

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[7] The CAA requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards.

originally described the technical information of the physical processes that produce ozone, fine particles, and regional haze and relied on that in developing a proposed implementation approach. See "Implementation of New or Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations; Proposed Rule" (December 13, 1996, 61 FR 65764). The EPA also participated with States in the eastern United States in the Ozone Transport Assessment Group (OTAG), which documented that long-distance transport of nitrogen oxides across much of the OTAG study area contributed to high levels of ozone. For background on OTAG and the results from the study, see the following web site: http://www.epa.gov/ttn/naaqs/ozone/rto/otag/index.html.

That OTAG process resulted in a report to EPA with the ~~following overall~~ conclusions that included the following:

-Regional NO_x reductions are effective in producing ozone benefits; the more NO_x reduced, the greater the benefit.
-Ozone benefits are greatest where emissions reductions are made; benefits decrease with distance.
-Elevated and low-level NO_x reductions are both effective.
-Volatile organic compound controls are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.
-Air quality data indicate that ozone is pervasive, that ozone is transported, and that ozone aloft is carried over and transported from one day to the next.

~~-The range of transport is generally longer in the North than in the South.~~

~~-There may be only minimal impacts of emissions from sources located in the "coarse grid" of the modeling domain[8] on air quality in areas in the "fine grid" of the modeling domain.~~

As a result of these recommendations, EPA called for SIP revisions from 22 States and the District of Columbia and established Statewide budgets on NO_x emissions that those jurisdictions would have to meet by 2007. Stationary source emissions reductions to meet the budgets were required to be implemented by May 2004[8]. The purpose of the rule was to address long-range transport by eliminating the significant contribution that each State's NO_x emissions made to both 1-hour and 8-hour ozone nonattainment problems in downwind areas. The call for SIP revisions was challenged by a number of States, industry and interest groups but was largely upheld by the court and has remained a viable means for obtaining significant NO_x emissions reductions.

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[8]EPA's NO_x SIP Call mandated reductions by May 2003. However, the Court's stay of the rule pending litigation resulted in a 1-year delay to May 2004.

The OTAG report also recognized that VOC emissions reductions do not play much of a role in long-range transport, and concluded that VOC reductions are effective in reducing ozone locally and are most advantageous to urban nonattainment areas.

Under the Federal Advisory Committee Act (FACA), EPA also formed a Subcommittee for Development of Ozone, Particulate Matter and Regional Haze Implementation Programs that provided recommendations and ideas to assist EPA in developing implementation approaches for these programs. The EPA has incorporated ideas from the FACA process for a number of SIP elements, particularly those related to transport of ozone, the process for demonstrating attainment of the ozone standard, and requirements for ensuring reasonable further progress. Further information on the FACA process and its reports is found at the following web site: http://www.epa.gov/ttn/faca/.

As noted above, EPA has also promulgated national rules that reduce VOC and NO_x emissions (ozone precursors) from mobile and stationary sources, which also help address ozone nonattainment problems. A number of comments received by EPA recommended that EPA set additional national standards

for more source categories such that States and Tribes do not have to control these sources locally. They suggest that such standards would eliminate the inconsistent regulation that occurs when each nonattainment area chooses how to regulate sources within its jurisdiction. The EPA continues to review source categories for possible Federal measure development.

This technical backdrop led EPA to be guided by the above-mentioned principle in developing the proposed approach: to emphasize national and regional measures to help areas come into attainment and, where possible, reduce the need for those local controls that are more expensive than national and regional measures. However, as noted below, national and regional measures alone are not anticipated to bring all areas into attainment without some local controls in some areas through the SIP process.

III. HOW DID EPA OBTAIN STAKEHOLDER INPUT FOR THIS EFFORT?

The EPA initiated a process to obtain stakeholder feedback on options the Agency developed for implementation of the 8-hour ozone NAAQS. The EPA held three public meetings in addition to a number of conference calls and meetings with State, local and Tribal governments,

environmental groups and industry representatives. (The lists of the organizations with whom EPA had discussions are in the docket, in addition to meeting and conference call summaries.) The purpose of the meetings and conference calls was to obtain stakeholder feedback regarding the options that EPA had developed as well as to listen to any new or different ideas that stakeholders were interested in presenting.

The EPA received comments in response to the meetings and conference calls. The comments from the public meetings addressed a number of issues related to the implementation approach.

In addition to comments received at the public meetings, EPA received a number of written comments on how to implement the 8-hour ozone NAAQS. The EPA has considered these comments in the implementation approach proposed below.

IV. WHAT IS EPA'S SCHEDULE FOR ISSUING AN 8-HOUR OZONE IMPLEMENTATION RULE?

The EPA plans to issue a final rule on an implementation approach ~~no later than 1 year after this proposed rule is published~~by the end of 2003. While there

is not a CAA deadline for promulgating a strategy to implement the 8-hour ozone NAAQS, the CAA does establish a deadline for EPA to promulgate designations of nonattainment areas under section 107 of the CAA.[9] The EPA ~~is currently seeking~~sought comment on a consent decree that would require EPA to promulgate designations by April 15, 2004.
[10]

The nonattainment designation for an area starts the process whereby a State must develop a SIP that demonstrates how the air quality standard will be attained by the attainment dates required in the CAA. The EPA plans to have an implementation strategy in place prior to designating areas for the 8-hour ozone standard. This will enable areas that are designated nonattainment for the 8-hour ozone standard to understand the obligations that attach to nonattainment designations and associated classifications

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[9]Section 107(d) of the CAA sets forth a schedule for designations following the promulgation of a new or revised NAAQS. The Transportation Equity Act for the Twenty-first Century (TEA-21) revised the deadline to publish nonattainment designations to provide an additional year (to July 2000), but HR3645 (EPA's appropriation bill in 2000) restricted EPA's authority to spend money to designate areas until June 2001 or the date of the Supreme Court ruling on the standard, whichever came first.

[10]67 FR 70070 (November 20, 2002)

~~when EPA takes action to designate areas.~~

~~V.~~

V. IN SHORT, WHAT DOES THIS PROPOSED RULEMAKING CONTAIN?

This summary is intended to give an overview of EPA's proposed rule; however, it should not be relied on for the actual proposal. The proposal should be consulted directly. The structure of this summary does not match exactly the structure of the actual proposal.

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A. Classification of Areas

Under the CAA, an ozone nonattainment area's classification determines the minimum measures that must be included in the area's SIP for meeting the 8-hour standard and the maximum time period allowed for the area to meet the standard. The EPA is proposing two options for classifying areas.

Under option 1, all areas would be classified under subpart 2 according to 8-hour ozone levels. As a result, all areas would be classified as marginal, moderate, serious, or severe or extreme (based on the most recent air quality data, no areas would fall in the "extreme"

classification), and would be subject to control requirements specified in the Act for each classification.

Under Option 2, more than half the nonattainment areas would be regulated under subpart 1. All of these would be areas meeting the 1-hour ozone standard. The rest of the areas--those exceeding or very close to exceeding the 1-hour standard--would be classified under subpart 2 in the same manner as option 1.

EPA also is proposing an "incentive feature" that would allow areas to qualify for a lower classification under subpart 2 than their air quality would dictate if they demonstrate they will attain by the earlier attainment date of the lower classification. For example, an area that would be classified "moderate" could qualify for a "marginal" classification by showing it will attain within 3 years of designation. The "incentive feature" is proposed for use in conjunction with either classification option.

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B. Attainment Deadlines

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EPA is proposing that for areas classified under

subpart 2, the periods for attainment (running from the date of designation/classification) would be 3 years for marginal areas, 6 years for moderate areas, 9 years for serious areas, and 15 years for severe-15 areas, and 17 years for severe-17 areas.

If classification option 2 were selected, some areas would be classified under subpart 1. Attainment dates for these areas would be no later than 5 years after designation, although they could be extended up to 10 years after designation depending on the severity of the area's air pollution and the availability and feasibility of pollution control measures.

For all areas, the Act requires each plan to be designed to meet the standard as expeditiously as practicable, regardless of the maximum statutory period specified for attainment.

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[NOTE: THE FOLLOWING 2 SECTIONS ARE BEING REDRAFTED (WILL LIKELY BE COMBINED INTO ONE SECTION)]

C. Transition from 1-hour to 8-Hour Ozone Standard

D. Anti-backsliding Provisions

E. Mandatory Measures

The EPA believes that the CAA is clear that once an area is classified under subpart 1 or subpart 2, the area's State implementation plan must contain the measures enumerated in the Act for its classification. However, today's proposal contains several features intended to provide States with flexibility on the measures included in SIPs for 8-hour areas. In addition, EPA is proposing to consider case-by-case waivers if the applicant can show, consistent with case law on this issue, that implementing a requirement in a particular area would cause "absurd results."

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F. Consequences of Failure to Attain

The consequences of failure to attain the standard on time are specified by the Act. If an area classified under subpart 2 fails to meet the standard by its deadline, the Act requires that the area be bumped up to a higher classification and adopt a revised plan containing the additional measures specified by the Act for that classification. If an area classified under subpart 1 fails to meet the standard by its deadline, the area would be

required to adopt a new plan demonstrating attainment, including any requirement mandated by the Administrator.

G. Interstate Transport

EPA is taking comment on a proposed approach to the issue of interstate transport of ozone pollution and its precursors. Under this approach, any further requirements would be imposed through a separate rule, not through the 8-hour ozone implementation rule. The EPA plans to investigate the extent, severity and sources of interstate transport after the NO_x SIP call, which was issued in 1998, is implemented. If further remedial emission reductions are warranted, EPA would anticipate requiring these reductions in conjunction with a ~~planned~~possible rule to reduce interstate pollution transport that contributes to unhealthy levels of $PM_{2.5}$ in downwind areas. The EPA believes that interstate transport should be addressed "up front," before 8-hour attainment SIPs are adopted. This approach would enable States to know as they design their local attainment plans the extent to which air quality at the area's boundary will be improved.

H. Modeling and Attainment Demonstration

An attainment demonstration SIP includes technical

analyses to locate and regulate sources of emissions that are contributing to violations within nonattainment areas. Section 182(a) does not require marginal areas, which have an attainment date only 3 years following designation to perform any photochemical grid modeling. The EPA is proposing to allow areas with attainment dates within 3 years after designation--regardless of whether they are covered under subpart 1 or 2--to rely on existing modeling. Areas with later attainment dates (more than 3 years after designation) would be required to do an attainment demonstration SIP. Modeling developed to support Federal or local controls may be used if the application of that modeling is consistent with EPA's modeling guidance.

I. Reasonable Further Progress (RFP)

There are several issues related to the Act's RFP requirements.

1. Requirement for 15 percent VOC reductions for moderate and above areas during the first 6 years after the base year.

EPA is proposing two ways to implement the 15 percent 2 requirements for moderate-and-above areas to meet numerical emissions reduction milestones (also known as rate-of-

progress, or ROP, requirements).

Under the first option, all such areas would be required to reduce baseline VOC emissions by 15 percent over the first six years after a baseline year.

Under the second option, areas that previously reduced VOC emissions by 15 percent as part of implementing the 1-hour standard would be viewed as having already met the requirement. Moderate areas meeting this criterion would comply with the general subpart 1 requirement to demonstrate "reasonable further progress" toward meeting the standard. Serious-and-above areas meeting the criterion would be required to achieve an 18 percent reduction in VOC and/or NOx over the first 6 years and 9 percent over subsequent three-year periods until the area's attainment date.

2. Base Year

The EPA is proposing 2002 as the baseline year, and that the six-year period for reductions would run from January 1, 2003 until December 31, 2008. The EPA proposes that States be allowed credit toward meeting the ROP requirements for all emission reductions that occur after the 2002 base year--including reductions from all post-1990 federal or other measures (except those specifically

excluded under section 182(b)(1)) of the CAA. The EPA has also recently issued a memorandum that sets forth 2002 as the baseline year for planning purposes.

EPA also is proposing options for other RFP issues, including:

- The timing of ROP reductions relative to attainment date for moderate areas.
- Timing of submission of ROP plan.
- CAA requirements for creditability of control measures.
- Subpart 1 RFP.
- Cases where 8-hr NA area encompasses and is larger than current 1-hr NA area.
- Use of RFP for addressing transport.

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J. RACM/RACT

In the event classification option 2 is selected, EPA is proposing an interpretation of the requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT) for areas covered by subpart 1.

For RACT, for areas with 8-hour ozone levels that would place them in a moderate or above classification under subpart 2, EPA is proposing two options. Under the first option, these areas would be required to meet the traditional technology-based RACT control requirement that

are applicable to moderate and above areas under subpart 2. Under the second option, if the area is able to demonstrate attainment of the standard as expeditiously as practicable with emission control measures in the SIP, then RACT will be met, and additional measures would not be required as being reasonably available.

For subpart 1 areas with 8-hour ozone levels that would place them in a marginal classification if classified under subpart 2, the RACT requirement would be similar to that for marginal areas covered under subpart 2. This RACT approach also would be available to areas that qualified for marginal status via the incentive feature.

EPA proposes to formally recognize NOx, as well as VOC, as an ozone precursor, so that reasonably available control technology for NOx would be required for areas classified under either subpart 1 or subpart 2 for the same kinds of sources covered under the 1-hour ozone standard.

The RACT requirements for areas under subpart 1 would have to be submitted within 2 years after an area's nonattainment designation.

For RACM, EPA proposes to continue with the same interpretation that it has used for implementing the 1-hour

ozone standard. To show that all RACM have been included in the plan, the State must show that there are no additional measures that are technically and economically feasible that will advance the attainment date.

K. Conformity

No changes to the transportation conformity rule are proposed in this rulemaking. Transportation conformity is discussed in this notice for informational purposes. By statute, transportation conformity applies to 8-hour nonattainment areas one year after the effective date of an area's designation. The EPA's proposal to revoke the 1-hour standard one year after 8-hour ozone area designations means that transportation conformity requirements under the 1-hour standard would end at the same time 8-hour transportation conformity requirements begin. The EPA is proposing that conformity would not apply in 1-hour ozone standard maintenance areas after EPA revokes the 1-hour ozone standard.

For the general conformity program, which ensures that federal actions will not interfere with an area's air quality plan, EPA is not proposing to revise its General Conformity Regulations in this rulemaking. The EPA plans to

retain the existing *de minimis* emissions levels for actions exempt from the rule. The EPA's proposal to revoke the 1-hour standard one year after 8-hour ozone area designations means that general conformity requirements under the 1-hour standard would end at the same time 8-hour general conformity requirements begin. The EPA is proposing that general conformity would not apply in 1-hour ozone standard maintenance areas after EPA revokes the 1-hour ozone standard.

L. New Source Review

The EPA is proposing three options for NSR:

- A "status quo" NSR program under which subpart 1 areas would be covered by subpart 1 NSR, while subpart 2 areas would be covered by subpart 2 NSR.
- A more flexible "Transitional" NSR program for areas that submit early SIPs and that attain early. This program would be available to areas covered under subpart 1 and that are attaining the 1-hour ozone standard.
- A "Clean Air Development Community" program that would allow a more flexible NSR program for areas that manage growth in emissions-producing activities.

VI. WHAT ARE EPA'S PROPOSED FRAMEWORKS FOR IMPLEMENTING THE 8-HOUR OZONE STANDARD?

As noted above, EPA originally intended to implement the 8-hour ozone standard under subpart 1 of part D, title I

of the CAA. This would have allowed areas more flexibility to determine whether to regulate NO_x, VOC or both to address ozone nonattainment.

As also noted above, however, the Supreme Court determined that an approach that did not provide for classifying areas under subpart 2--and thus subjecting those areas to the subpart 2 control requirements--in implementing the 8-hour standard was unreasonable. In structuring a proposed implementation rule, EPA has tried to stay as close as possible to the principles noted above, particularly with regard to seeking flexible ways for States to address their 8-hour ozone problems by avoiding measures that may be unreasonable for an area. The EPA has spent a large amount of time investigating possible legal theories and policy options to find flexibility within the statute, as interpreted by the Supreme Court. The EPA has also had the benefit of ideas and recommendations from many interested stakeholders, who also have spent much time developing their own theories and ideas. Based on these efforts, EPA believes that it has developed options for an implementation program that is workable under the constraints of the CAA. Nonetheless, EPA recognizes that those constraints will

still require a number of areas to adopt certain control measures that may not be as effective as others in achieving the 8-hour ozone standard. The EPA is soliciting any further ideas for addressing this situation.

To describe EPA's proposed frameworks for implementing the 8-hour ozone standard, it is necessary to examine all the components or elements of the process used to implement the standard. Therefore, the issues and options that EPA is proposing that deal with the aspects of preparing SIPs for the standard are presented below individually. Following that, EPA presents two possible alternative frameworks that blend one or more options from each of the elements to illustrate how they may work in conjunction with each other. The EPA is soliciting comment on the options presented for the individual elements, and also on how the options can be grouped into a consolidated implementation framework.

The proposal below describes only those options or approaches EPA is proposing. The EPA considered a number of other options and approaches for the elements discussed below. These other options that were considered but are not being proposed are described in a separate document

available in the docket.[11]

~~A summary of the major elements and the options EPA is proposing appears in Appendix C of this proposed rulemaking.~~

A. How will EPA reconcile subparts 1 and 2? How will EPA classify nonattainment areas for the 8-hour standard? What attainment dates would apply?

1. Statutory framework and Supreme Court decision

The CAA contains two sets of requirements--subpart 1 and subpart 2--that establish requirements for State plans implementing the national ozone air quality standards in nonattainment areas. (Both are found in title I, part D.) Subpart 1 contains general requirements for SIPs for nonattainment areas for any pollutant--including ozone--governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment SIPs.

Throughout this proposed rulemaking, EPA repeatedly discusses whether an area is subject to the planning requirements of subpart 1 or subpart 2. This language is

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[11]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. ~~December~~January 200~~2~~3.

convenient shorthand for purposes of this proposal. Actually, if an area is subject to subpart 2 requirements, it is also subject to subpart 1 requirements. In some cases, subpart 1 and subpart 2 requirements are inconsistent or overlap. To the extent that subpart 2 addresses a specific planning obligation, the provisions in subpart 2 control. For example, under section 182(b), moderate areas are subject to 15 percent rate-of-progress requirements rather than the more general reasonable further progress requirements of section 172(c)(2). However, moderate areas remain subject to the contingency measure requirement of section 172(c)(9), as that requirement is not addressed for moderate areas in subpart 2.[12]

When EPA published the 8-hour ozone standard on July 18, 1997, EPA indicated it anticipated that States would implement that standard under the less prescriptive subpart 1 requirements. More specifically, EPA provided that areas designated nonattainment for the 1-hour ozone standard would remain subject to the subpart 2 planning

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[12]"State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Proposed Rule." April 16, 1992 (57 FR 13498 at 13501 and 13510).

requirements for purposes of the 1-hour standard until such time as they met that standard. But those areas and all other areas would only be subject to subpart 1 for purposes of planning for the 8-hour ozone standard.

As noted above, in February 2001, the Supreme Court ruled that the statute was ambiguous as to the relationship of subparts 1 and 2 for purposes of implementing the 8-hour NAAQS. However, the Court also ruled that EPA's implementation approach, which provided no role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. Id. Specifically, with respect to classifying areas, the Supreme Court stated:

> [D]oes subpart 2 provide for classifying nonattainment ozone areas under the revised standard? It unquestionably does.

Whitman, 121 S.Ct. at 917.

However, despite recognizing that subpart 2 does provide classifications applicable for the 8-hour standard, the Supreme Court also recognized that the subpart 2 classification scheme, specified in section 181, did not entirely fit with the revised 8-hour standard and left it to EPA to develop a reasonable resolution of the roles of

subparts 1 and 2 in implementing a revised ozone standard. Id. at 482-486.

In particular, the Court noted three portions of section 181 - the classification provision in subpart 2 - that it indicated were "ill-fitted to implementation of the revised standard."

- First, the Court recognized that 1-hour design values used for establishing the classifications in Table 1 in section 181 "would produce at best an inexact estimate of the new 8-hour averages . . ." 121 S.Ct. at 918.
- Second, the Court recognized that the design values in Table 1 start at the level of the 1-hour NAAQS - 0.12 ppm. The Court noted that "to the extent the new ozone standard is stricter than the old one, . . . the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard (and thus nonattaining) but less than the approximation of the old standard codified by Table 1." Id.
- Third, the Court recognized that "Subpart 2's method for calculating attainment dates - which is simply to count forward a certain number of years from November 15, 1990 . . . seems to make no sense for areas that are first classified under a new standard after November 15, 1990." More specifically, the Court recognized that attainment dates for marginal (1993), moderate (1996), and serious (1999) areas had passed. Id. at 483-484.

2. EPA's development of options

In light of the Supreme Court's ruling, EPA examined the statute to determine the manner in which the subpart 2 classifications should apply for purposes of the 8-hour

ozone NAAQS. In particular, EPA paid particular attention to the three portions of section 181 that the Supreme Court noted were ill-fitted for implementation of the revised 8-hour standard. The EPA examined those provisions in light of the legislative history and the overall structure of the CAA to determine what Congress intended for purposes of implementing a revised, more stringent ozone standard. At the same time, EPA did not view the ambiguity created by the statute to provide EPA with carte blanche authority to re-write the statute. Rather, EPA believes that it needs to take a narrow reading consistent with what it believes Congress intended. Consistent with those principles, EPA developed several options.

3. Options for classification

The EPA is proposing two options for comment. The EPA prefers classification Option 2 because it provides more flexibility to States and Tribes as they address their unique air quality problems. This is likely to allow some areas to attain the standard at a lower cost. However, EPA is also soliciting comments on Option 1, in part, because it is less complex and may be easier to communicate, in addition to any other ideas on how to classify nonattainment

areas.

a. Option 1. Under the first option, EPA would classify 8-hour ozone nonattainment areas according to the severity of their ozone pollution based on 8-hour ozone levels.

Under this option, all 8-hour nonattainment areas would be classified under subpart 2 as marginal, moderate, serious, severe-15, severe-17, or extreme. The CAA gives areas in higher classifications -- which are those with more serious ozone pollution problems -- longer time periods for attaining the standard, but also requires these areas to meet a longer list of requirements than areas in lower classifications.

A key feature of this option is the use of 8-hour ozone design values in determining the severity of an area's 8-hour ozone problem. However, the subpart 2 classification table (Table 1 of CAA section 181) is based on 1-hour ozone design values (because it was designed for implementation of the standard in effect in 1990--the 1-hour ozone standard). Therefore, this option would require EPA to adapt the subpart 2 classification scheme. Specifically, EPA would adopt by regulation a modified version of the subpart 2 classification table that contains 8-hour design value

thresholds for each classification, rather than the statutory 1-hour ozone design value thresholds. Using 8-hour design values for classifying areas for the 8-hour standard would reflect the magnitude of the 8-hour ozone problem more accurately than would the 1-hour design values in Table 1.

The EPA is proposing to translate the classification thresholds in Table 1 of section 181 from 1-hour values to 8-hour values in the following manner: Determine the percentage by which each classification threshold in Table 1 of section 181 exceeds the 1-hour ozone standard and set the 8-hour threshold value at the same percentage above the 8-hour ozone standard. For example, the threshold separating marginal and moderate areas in Table 1 is 15 percent above the 1-hour standard, so EPA would set the 8-hour moderate area lower threshold value at 15 percent above the 8-hour standard.

An examination of the percentages derived indicated that Congress set the classification thresholds at certain percentages or fractions above the level of the standard.[13]

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[13]The upper thresholds of the marginal, moderate, serious, severe-15, and severe-17 classifications are

These are the percentages above the standard that we used and applied to the level of the 8-hour standard to yield new threshold levels for the 8-hour standard. Table 2 of this proposed rulemaking below depicts how the translation would be done and the results.

There are other ways of performing the translation as described further below, some of which have been suggested in public comment, but EPA believes that the translation described here is most consistent with the apparent intent of Congress in establishing the thresholds in the classification system in section 181.

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precise percentages or fractions above the level of the standard, namely 15.000 percent (3/20ths more than the standard), 33.333 percent (one-third more than the standard), 50.000 percent (one-half more than the standard), 58.333 percent (7/12ths more than the standard) and 133.333 percent (one and one-third more than the standard).

TABLE 2
TABLE 1 OF SUBPART 2 1-HOUR OZONE CLASSIFICATION TABLE
TRANSLATION TO 8-HOUR DESIGN VALUES

Area class		CAA design value thresholds 1-hour ozone ppm	% above 1-hour ozone NAAQS	Translated 8-hour design value thresholds ppm ozone
Marginal	from	0.121	0.833	0.085*
	up to	0.138	15.000	0.092
Moderate	from	0.138	15.000	0.092
	up to	0.160	33.333	0.107
Serious	from	0.160	33.333	0.107
	up to	0.180	50.000	0.120
Severe-15	from	0.180	50.000	0.120
	up to	0.190	58.333	0.127
Severe-17	from	0.190	58.333	0.127
	up to	0.280	133.333	0.187
Extreme	equal to or above	0.280	133.333	0.187

* The percentages used were calculated based on the level of the 1-hour standard as it appears in 40 CFR 51.9, viz., 0.12 ppm. The percentages were applied to the 8-hour standard as it appears in 40 CFR 51.10, viz., 0.08 ppm. The EPA guidance uses a rounding convention for 1-hour air quality data such that values ~~of the 1-hour standard of~~ less than 0.125 round down to 0.12 and therefore represent attainment; values of 0.125 ~~or greater~~up to and including 0.129 round up to 0.13, and ~~those values are~~ therefore indicate nonattainment. An exact translation of the 0.121 1-hour threshold would have produced 0.081 ppm as the corresponding 8-hour threshold; however, since any value less than 0.085 ppm would indicate an area is attaining the 8-hour ozone standard, the table's lowest value reflects the lowest value

representing nonattainment, viz., 0.085 ppm.

As mentioned above, under this option all 8-hour nonattainment areas would be classified under subpart 2 and receive attainment dates consistent with their classification. Elsewhere in this proposed rule, EPA discusses how it would interpret the attainment dates in Table 1 of section 181 for purposes of areas classified under subpart 2 for the 8-hour standard. Areas that do not attain by their attainment date would be reclassified to a higher classification and be given a later attainment date and would be subject to the measures of the higher classification (section 181(b)(2)).

b. Option 2--2-step approach. The EPA is proposing a second option (EPA's preferred option) under which some areas would implement the 8-hour standard under subpart 1, and other areas would implement the 8-hour standard under subpart 2. This option relies on language in the Supreme Court decision, which is described in detail below.

In ~~a nutshell~~brief, the option that EPA is proposing would work as follows:

- First, EPA would determine which 8-hour areas must be classified under subpart 2. These would be areas with ozone levels that exceed the 1-hour ozone design values that Congress specified in Table 1 of section 181. For

the remaining areas, EPA would have discretion to place them under subpart 1 or subpart 2.

- Second, EPA would classify all areas. Subpart 2 areas would be classified in the same manner described above under option 1. Options for classifying subpart 1 areas are described below.

(i) Legal framework for 2-step approach. Under this approach, EPA first determines the universe of areas that must be subject to the provisions of subpart 2 and the universe of areas that fall into a "gap" in subpart 2's classification scheme. Then, EPA proceeds to determine how to classify the areas.

(ii) Legal Framework--Step 1--Which subpart applies for an area? With respect to the first step, the Supreme Court noted that "to the extent that the new ozone standard is stricter than the old one, . . . the classification system of Subpart 2 contains a gap, because it fails to classify areas whose ozone levels are greater than the new standard . . . but less than the approximation of the old standard codified by Table 1 [in section 181(a)]." 121 S.Ct. at 918. Thus, for those areas with a 1-hour ozone design value above the level identified in Table 1 (i.e., 0.121 ppm), Table 1 "specifies" a classification for the

area. For those areas, EPA would not have authority to establish classifications under subpart 1 because section 172(a)(1)(C) prohibits the use of the classification authority in section 172(a)(1)(A) for those areas.[14] However, for areas with 1-hour ozone design values below 0.121 ppm, Table 1 does not specify a classification, and those areas fall into a gap in the statute. Thus, EPA must reasonably determine whether such areas should be subject to the planning obligations of subpart 1 or subpart 2. This issue is discussed more fully below under "Proposed Option for 'Gap' Areas."

In summary, under the first step of this approach, EPA examines each nonattainment area's most recent 1-hour design value at the time of designation ~~for~~under the ~~1-hour~~8-hour NAAQS to determine whether the area must be subject to the classification under subpart 2. If an area's 1-hour design value is 0.121 or higher, then it must be subject to a subpart 2 classification. If its 1-hour design value is

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[14]Section 172(a)(1)(C) provides that the provisions of section 172(a) "shall not apply with respect to nonattainment areas for which classifications are specifically provided" in other sections of part D. Similarly, section 172(a)(2)(D) provides that the attainment date provisions in section 172(a)(2) do not apply "to nonattainment areas for which attainment dates are specifically provided" elsewhere in part D.

lower than 0.121, it falls into a gap and EPA must determine a reasonable implementation scheme - either subpart 1 or subpart 2 - for such area.

(iii) Legal framework--Step 2--How should areas be classified under subparts 1 and 2? Under step 2 of this approach, EPA must determine how to classify areas subject to the classification provisions of subpart 2. For those areas subject to the classification provisions of subpart 2, EPA believes that it is most reasonable to use the area's 8-hour design value to determine the appropriate classification. This would be done in the same manner as option 1, proposed above, in which the Table 1 threshold design values are converted from 1-hour values to 8-hour values.

Another option would have been to apply Table 1 as it is written. Some might argue that this approach is better because it is consistent with the factor EPA would use under this option to determine whether Congress mandated that the area be subject to subpart 2. The EPA does not believe that Congress would have intended the use of 1-hour design values for determining the classification - and therefore the control obligations and attainment dates - of 8-hour areas. While EPA believes it is reasonable to use the 1-hour design

values as a barometer of Congress' intent as to which areas should be subject to the more prescriptive requirements of subpart 2, EPA does not believe it makes sense to use the 1-hour values to establish each area's classification under that subpart. The area's classification identifies the specific control requirements applicable to each area within that classification and the period of time the area has to attain. As enacted, the Table provides that areas having a more significant ozone pollution problem for the 1-hour standard and thus a higher classification are subject to more stringent controls and have a longer period to attain. Because of the different form and averaging times of the 1-hour and 8-hour standards, areas with significant 1-hour problems may not have as significant an 8-hour problem and vice versa. Using the 1-hour design values to classify areas, therefore, could result in areas with less significant ozone problems being subject to stricter planning obligations (and later attainment dates) than those with a more significant problem. Thus, EPA believes it is more consistent with Congressional intent to use 8-hour design values as the means for specifying the stringency of controls needed to attain the 8-hour ozone standard and the associated attainment dates. The EPA also believes that

this is consistent with the Supreme Court decision, in which the Court recognized that the "1-hour averages" in Table 1 "produce at best an inexact estimate of the new 8-hour averages." See 121 S.Ct. at 918.

As discussed in the following section, for areas that EPA determines would be subject only to subpart 1, section 172(a)(1)(A) grants EPA discretion to develop a classification scheme.

4. Under classification option 2, how would EPA classify subpart 1 areas?

a. Background. As noted above, classification option 2 above could result in a number of areas not being classified under subpart 2. Section 172(a)(1)(A) grants EPA discretion to establish a classification system for areas covered under subpart 1 but does not mandate classifications. Section 172(a)(1)(A) provides that

> on or after [the date of designation], the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

Prior to the Supreme Court's remand of EPA's

implementation approach, EPA had proposed that all 8-hour ozone nonattainment areas be subject only to subpart 1 for purposes of the 8-hour standard, and that areas would be classified as traditional, transitional, or international transport. These classifications were described in EPA's November 17, 1998 draft implementation guidance.[15]

Because EPA is no longer considering an option where all areas would be classified under subpart 1, EPA has determined the classification scheme it proposed earlier is not appropriate. The EPA is now proposing, as described below, two new options for classifying subpart 1 areas for the 8-hour standard.

b. Options for classifying subpart 1 areas

(i) Option 1--no classifications. Under this option, subpart 1 areas would not have different classifications. When submitting an attainment demonstration, each area would need to establish an attainment date consistent with section 172(a)(2)(A), i.e., demonstrating attainment as expeditiously as practicable, but no later than 5 years

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[15]Proposed Implementation Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and the Regional Haze Program. November 17, 1998. Found at: http://www.epa.gov/ttn/oarpg/t1pgm.html

after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

(ii) Option 2--create an overwhelming interstate transport classification. ~~This option is patterned after an approach being considered for $PM_{2.5}$ (which EPA anticipates will be implemented under subpart 1).~~ Under this option, an area could be classified as a "Transport Area" upon submission of a SIP that demonstrates, using modeling, that the nonattainment problem in the area is due to "overwhelming transport" emissions.

The EPA is proposing that for subpart 1 areas to qualify for an overwhelming transport classification, the area would have to meet the same criteria as specified for rural transport areas under section 182(h) (of subpart 2). This section restricts treatment as a rural transport area to an areas that does not include, and is not adjacent to, any part of a Metropolitan Statistical Areas or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census. The area may be treated as a rural transport area if EPA finds that sources or VOC (and where EPA determines relevant) NO_x)

emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.[16] Since this classification would only apply to subpart 1 areas, areas classified under subpart 2 would not qualify for this classification.

The following are features of this option:

- The area would ~~only~~ be ~~required to apply local control measures sufficient to demonstrate that the area would attain the standard by a date as expeditious as practicable under subpart 1 "but for" transport from upwind States. Reasonable further progress requirements under subpart 1 would apply to the timing of implementation of the control measures (this is discussed elsewhere in this proposed rulemaking)~~treated similar to areas classified marginal under subpart 2 for purposes of emission control requirements.
- Less restrictive NSR and conformity requirements could be proposed for the area. If EPA includes the transport classification option in the final implementation rule, EPA would consider proposing ~~a~~ separate rulemaking on the details of NSR and conformity requirements, likely consistent with the approach we would adopt for implementation of the $PM_{2.5}$ NAAQS. ~~Furthermore, EPA is also proposing elsewhere in this proposed rulemaking in the section concerning RACT an option for a more streamlined RACT process for subpart 1 areas that would receive the transport classification.~~
- The area would receive an attainment date that ~~takes~~

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[16]The EPA's guidance on such determinations appears in "Criteria for Assessing the Role of Transport of Ozone/Precursors in Ozone Nonattainment Areas," May 1991. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Technical Support Division, Research Triangle Park, NC 27711. Available at: http://www.epa.gov/scram001/tt25.htm. Look for zip file name UAMIVGUIDE. Unzip to access file name UAMCRIT.

~~into consideration the attainment date of upwind areas contributing to the downwind area's problem, but that~~ is consistent with section 172(a)(2)(A), but that takes into consideration the following:

- The attainment date of upwind nonattainment areas that contribute to the downwind area's problem; and
- The implementation schedule for upwind area controls, regardless of their geographic scope (e.g., national, regional, statewide, local).

This option would partially address Tribal concerns about designations where ~~the~~a Tribal area ~~is~~ designated nonattainment ~~but contributes~~does not contribute significantly to its own ~~problems in a limited manner~~problem. This is one of the key issues for the Tribes who seek to have economic growth from new sources within their jurisdiction but that have difficulty obtaining emission reduction offsets from sources located either inside or outside Tribal ~~lands~~areas.

Interstate, intrastate, and international transport are also discussed elsewhere in this proposed rulemaking.

5. Rationale for regulating all "Gap" areas under subpart 1 only.

This section is aimed solely at providing a rationale for why all gap areas should be placed under the subpart 1 regulatory framework rather than the subpart 2 regulatory framework. Issues regarding what specific requirements

should apply to subpart 1 areas are addressed in later sections of this preamble.

In developing classification option 2, the EPA explored a number of options regarding how to interpret the relationship of subpart 1 and subpart 2 for areas with 1-hour design values less than 0.121. These areas are referred to below as "gap" areas because their 1-hour design value falls below the lowest value in the subpart 2 classification table and thus Congress did not dictate whether subpart 2 or subpart 1 applies. The options EPA explored ranged from placing all of these areas into the subpart 2 classification scheme to placing none of these areas into the subpart 2 classification scheme. The EPA is proposing the latter approach--that all areas that fall into the gap should be subject only to the planning obligations of subpart 1. When faced with a similar issue following enactment of the CAA Amendments of 1990, EPA determined that areas that Congress did not mandate fall into the classification scheme of subpart 2 should be subject to only the planning obligations of subpart 1.[17]

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[17]These areas included: (a) the transitional areas under section 185A (areas that were designated as an ozone nonattainment area as of the date of enactment of the CAA Amendments of 1990 but that did not violate the 1-hour ozone

For classification option 2, the EPA believes it is appropriate to continue that interpretation of the CAA for 8-hour ozone areas, despite the fact that a significant number of areas designated nonattainment for the 8-hour NAAQS will fall into this group. Congress enacted subpart 2 with the understanding that all areas (except marginal areas, for which no new controls were required) would have to employ additional local controls to meet the 1-hour ozone standard in a timely fashion. Since then, many control measures have been implemented, our understanding of the importance of interstate pollution transport has improved, and EPA has promulgated interstate transport rules. Regional modeling by EPA indicates that the majority of potential 8-hour nonattainment areas that fall into the gap will attain the 8-hour standard by 2007 based on reductions from the NO_x SIP call, the federal motor vehicle emissions control program, and other existing Federal and State

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NAAQS between January 1, 1987, and December 31, 1989); (b) nonattainment areas that had incomplete (or no) recent attaining data and therefore could not be designated attainment; and (c) areas that were violating the 1-hour ozone standard by virtue of their expected number of exceedances, but whose design values were lower than the threshold for which an area can be classified under Table 1 of subpart 2 (submarginal areas). See 57 FR 13498 at 13524 col. 3 et seq. (April 16, 1992).

control measures, without further local controls.

Of the 76 hypothetical areas that would fall into the gap (and would thus be covered under subpart 1 under classification option 2), 27 would have been classified as moderate if classified under option 1 under subpart 2 by their 8-hour design values. Eighteen of these 27 areas are projected to attain by 2007 through existing regional or national measures. If these areas were to be classified as moderate (under classification option 1), these areas would nonetheless be required to implement statutorily specified controls for moderate areas. Using our discretion to regulate gap areas under subpart 1 is one way (the proposed incentive feature is another way) to avoid requiring unnecessary new local controls ~~that may not be needed for~~in areas already projected to meet the standard in the near term ~~as a result of already required controls~~.

The other 49 gap areas could be regulated either under subpart 1 (under option 2) or as marginal areas if classified by 8-hour design value under subpart 2 (under option 1). These areas already are meeting the 1-hour standard and are close to meeting the 8-hour standard. Because control requirements for marginal areas are similar to those for subpart 1 areas, and because most of these

areas are projected to attain within 3 years, the difference in regulatory category may make no practical difference for many of these areas. A potential rationale for placing these areas under subpart 1 is to provide States and EPA with greater discretion to handle implementation difficulties that might arise in some of these areas. For example, a gap area might fail to attain within the maximum attainment date for marginal areas (3 years after designation) because of pollution transport from an upwind nonattainment area with a later attainment deadline. In that event, subpart 2 calls for the area to be reclassified as moderate and for the area to implement additional local controls specified for moderate areas. For areas under subpart 1, however, EPA could provide additional time for the area to attain while the upwind sources implemented required controls if this were determined to be a more effective or more appropriate solution. Although regional modeling projections indicate that the NO_x SIP call will bring most gap areas into attainment by 2007, some States have voiced concern to EPA that interstate or intrastate pollution transport may affect future 8-hour areas with near-term attainment deadlines. Subpart 1 would provide States and EPA with more flexibility on the remedy in any

such cases.

Although EPA believes that there are reasons to place gap areas in subpart 1, and has the legal authority to do so, we are not suggesting that subpart 2 is unreasonable for any area that would be subject to subpart 2 under either classification option. Also, EPA's analysis here should not be taken as inconsistent with its proposal under Classification Option 1, whereby all 8-hour ozone nonattainment areas would be subject to the subpart 2 planning obligations. That simpler option, in conjunction with the incentive feature for classifications (if ultimately adopted), described elsewhere in this proposal, could provide similar flexibility on control measures for most (though not quite all) areas. In addition, the EPA is proposing ways in which to build some flexibility into some of the mandated VOC control obligations in subpart 2, in areas where it would make sense to provide such flexibility. —A final observation is that Congress did recognize some benefit in prescribing measures for areas because of past failure ~~of areas~~ to attain under less prescriptive provisions of the CAA.—

Placing all gap areas in subpart 1 would result in over half of the hypothetical nonattainment areas being covered

by subpart 1. To be fair, this option might appear to result in some areas being placed in subpart 1 even though they have 8-hour ozone design values as high or higher than some areas that fall under Table 1 in section 181 and thus are covered under subpart 2. As explained above, EPA believes the most effective way to deal with that issue is not to exercise its discretion and make those areas subject to subpart 2. Rather, EPA can use its discretion under subpart 1 to determine how to define the controls required under subpart 1 for such areas in order to assure the most equitable, yet effective, means for these areas to attain the 8-hour ozone NAAQS. For example, in the section of this proposed rulemaking addressing reasonable further progress (RFP) under subpart 1, EPA explores an option of defining RFP in the same manner as it is defined under subpart 2. The EPA is open to suggestions as to how to make the subpart 1 planning process that would apply to these areas effective and also equitable in light of the subpart 2 planning obligations to which areas with a similar 8-hour ozone problem may be subject.

6. Proposed incentive feature

In addition to the two basic classification options being proposed above, EPA is also proposing an early

attainment incentive feature that could be applicable to either of the options proposed above. Under this feature, for areas classified under subpart 2, EPA would classify an area at a lower classification than it would receive based on its design value, if a modeled demonstration indicates the area will attain by an attainment date that is consistent with the lower classification. For instance, if a subpart 2 area has an 8-hour ozone design value of 0.094 ppm, it would ordinarily be classified as moderate, with an attainment date 6 years after the area's designation as nonattainment for the 8-hour standard. If modeling acceptable to EPA demonstrates that this area will attain within 3 years after designation, the area would be eligible for classification as a marginal area, since marginal areas would have a maximum attainment date of 3 years after their nonattainment designation date. (See EPA's proposal on attainment dates elsewhere in this proposed rulemaking.)

In granting a lower classification to an 8-hour ozone nonattainment area based on this option, EPA proposes to take into account the extent to which the area significantly contributes to downwind nonattainment or interferes with maintenance under section 110(a)(2)(D) of the Act. The EPA solicits comment on possible mechanisms for assessing this

contribution for purposes of granting the lower classification, and possible tests for whether to grant or deny the lower classification.

In addition to soliciting comment on this proposed incentive feature itself, EPA is soliciting comment on whether such modeled demonstration would have to be made prior to the initial classification of areas, or whether it could be submitted after EPA has already classified the area initially at the higher classification, in which case EPA would have to revise the classification downward at a subsequent time.

The EPA also solicits comment on whether EPA, prior to initial classifications, should use EPA regional-scale modeling (rather than urban-scale modeling) to make determinations of which areas would receive a lower classification. Under this suboption, an area would qualify for the lower classification if EPA's regional modeling indicated that, based on emissions reductions from existing national and regional programs, the area would attain the 8-hour standard by the attainment deadline for the next lower classification. In requesting comment on this suboption, EPA notes that regional-scale modeling alone is not considered sufficient for an approvable attainment

demonstration. The EPA requests comment on whether regional-scale modeling would nonetheless be adequate for purposes of lowering an area's classification. (Under this approach, if regional modeling did not provide grounds for the lower classification, States would need to perform local attainment demonstrations to take advantage of the incentive feature.)

It should be noted that an option was presented and discussed at the public meetings similar to this incentive feature in conjunction with the option that would have classified all areas based on their 8-hour design values but also relied on modeled results to adjust the classification. The option received criticism from a wide variety of commenters, who argued that modeling could be applied inappropriately in classifying areas. The EPA nonetheless believes it is appropriate to propose this feature to alleviate some of the other concerns that many commenters raised about the mandatory measures required under the higher classifications of subpart 2. Furthermore, EPA believes this option is justified by the intent of the CAA, in which an area's classification is generally linked to the amount of time the area is anticipated to need to attain the NAAQS. The EPA recognizes that the CAA was not originally

structured to allow lower classifications based on an area being projected to attain earlier. However, under the Supreme Court ruling that required that EPA interpret the law regarding subpart 2's application to the 8-hour ozone standard, EPA believes it may reasonably give areas that are projected to attain the 8-hour ozone standard by an earlier date a classification that is consistent with that attainment date.

TABLE 3
PROPOSED CLASSIFICATION OPTIONS
COUNTS OF HYPOTHETICAL NONATTAINMENT AREAS

	Subpart 2						Subpart 1	
	Extreme	Severe-17	Severe-15	Serious	Moderate	Marginal		Total
Option 1 (8-hour DV)	0	1	1	6	53	61	0	122
Option 1 (8-hour DV)-with incentive feature*	0	1	1	6	30	84	0	122
Option 2 (~~hybrid areas~~2-step approach--areas < 0.121 ppm = subpart 1)	0	1	1	6	26	12	76	122
Option 2 (~~hybrid areas~~2-step approach--areas < 0.121 ppm = subpart 1)-with incentive feature*	0	1	1	6	21	17	76	122

*Areas that would be moderate using their 8-hour design value but that are projected to attain by 2007 would be classified marginal.

7. Other options EPA considered

The EPA considered many other options for classification and for the translation of the classification table in the CAA. These options are discussed in a separate document available in the docket.[18] These other possible ways of translating the classification table, in EPA's opinion, do not have the same degree of consonance with the intent of Congress when it enacted subpart 2 as those EPA is proposing. The EPA is therefore not proposing these. However, EPA will accept comments on the merits of them and if there is sufficient interest in any of these options, such that EPA believes they should be considered as an implementation option, EPA will consider publishing a supplemental proposal.

8. Implications for the options

To evaluate the potential impact of the various classification options, EPA developed a set of 122 hypothetical nonattainment areas based on the counties that have monitors measuring violations of the 8-hour ozone

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[18]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. ~~December~~January 200~~2~~3.

standard for the 3-year period of 1998-2000. It should be noted that EPA's inclusion and grouping of counties into hypothetical nonattainment areas was done only for illustrative purposes and does not have any implications for the location, number or boundaries of nonattainment areas that may ultimately be evaluated and recommended by States and Tribes or designated by EPA. The final designations would be affected by factors contained in EPA's guidance on boundaries of nonattainment areas (which is, as noted earlier, not a topic of discussion or comment for this notice of proposed rulemaking). As noted earlier, Table 3 above illustrates a possible classification grouping of nonattainment areas based on counties with monitors based on the options proposed above.

9. Other considerations

In addition to the overall classification options being proposed, it should be noted that subpart 2 also provides that classifications may be adjusted upward or downward for an area if the area's design value is within 5 percent of another classification. This provision (section 181(a)(4)) reads:

> If an area classified under [Table 1] would have been classified in another category if the design value in

> the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, . . . adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

Thus, for example, if a downwind area is subjected to a subpart 2 classification and there is evidence that the area will not benefit significantly from local controls mandated by subpart 2 for the area's classification and can attain within the time period specified for the next lower classification, the area may obtain some relief based on the 5 percent rule in the CAA, if applicable.

This provision does not establish a mechanism for removing areas from the subpart 2 classification scheme.

B. How will EPA treat attainment dates for the 8-hour ozone standard?

1. Background

Under subpart 2 of the CAA, maximum attainment dates are fixed as a function of a nonattainment area's classification under Table 1. The CAA provides that an area's attainment date must be "as expeditious as practicable but no later than" the date prescribed in Table 1 for that area's classification. The statutory dates are specified as a number of years (e.g., 6 years) from the date of enactment of the CAA Amendments, which was November 15, 1990. Because these dates are a set number of years after enactment of the CAA Amendments, one might initially conclude that the subpart 2 classifications, with their associated attainment dates, should not apply for the 8-hour standard. The Supreme Court, however, rejected a conclusion that the subpart 2 classifications do not apply, although it noted that the attainment dates "seem[ ] to make no sense" for areas classified under a new standard after November 15, 1990. 121 S.Ct. at 918.

EPA believes that applying the attainment dates as expressly provided under Table 1 would produce absurd results. For example, a strict application of Table 1 would result in areas classified as marginal for the 8-hour NAAQS as having an attainment date of November 15, 1993 and areas

classified as moderate as having an attainment date of November 15, 1996. Since these dates have long passed, it makes no sense to establish them as the applicable dates.

Many provisions of the CAA, however, indicate what Congress' intent was in setting attainment dates. For example, section 181(b), provides that for areas designated attainment or unclassifiable for ozone immediately following enactment of the 1990 CAA Amendments and subsequently redesignated to nonattainment, the attainment date would run from the date the area is classified under subpart 2.[19] Thus, if an area designated as attainment for the 1-hour ozone standard in 1990 were redesignated to nonattainment for the 1-hour ozone standard in January 2002 and classified as moderate, the area's attainment date would be 6 years following January 2002, i.e., January 2008. Similarly, section 172(a)(2) provides for attainment dates to be calculated from the time the area is designated nonattainment. The EPA believes that Congress would have

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[19]Section 181(b) provides that "any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between the date of the enactment of the CAAA of 1990 and the date the area is classified under this paragraph." Under section 181(b), the date of classification is the same as the date of redesignation to nonattainment.—

intended for areas designated nonattainment and classified under subpart 2 for the 8-hour standard to have attainment periods consistent with those in Table 1 (e.g., 3 years for a marginal area, 6 years for a moderate area etc.), but running from the date the area is designated and classified for purposes of the 8-hour NAAQS. Thus, EPA is proposing for areas classified under subpart 2, the period for attainment (running from date of designation/classification) would be:

- marginal - 3 years
- moderate - 6 years
- serious - 9 years
- severe - 15 or 17 years
- extreme - 20 years (no areas currently expected to be in this category for the 8-hour ozone standard).

Note that the CAA requires each area to demonstrate attainment as expeditiously as practicable, regardless of maximum statutory periods.

For areas classified under subpart 1, attainment dates would be set under section 172(a)(2)(A), which provides that the SIP must demonstrate attainment as expeditiously as practicable, but no later than 5 years after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

2. How will EPA address the provision regarding 1-year extensions?

Both subpart 1 and subpart 2 provide for two brief attainment date extensions for areas in limited circumstances where they do not attain by their attainment date. Section 172(a)(2)(C) (under subpart 1) provides for EPA to extend the attainment date for 1 year if the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and no more than a minimal number of exceedances of the relevant NAAQS has occurred in the area in the attainment year. No more than two 1-year extensions may be issued under this subparagraph for a single nonattainment area. Section 181(a)(5) (under subpart 2) contains a similar provision, but instead of allowing a "minimal" number of exceedances, it provides for only one exceedance of the standard in the year preceding the extension year. This reflects the form of the 1-hour ozone standard, which is exceedance-based. The 8-hour ozone standard, however, is not an exceedance form of standard, but rather a concentration-based standard.[20] The EPA has issued guidance

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[20]See 40 CFR 50.9(a); the 1-hour standard for ozone "... is attained when the expected number of days per

on the portion of these two provisions relating to the State's compliance with all —requirements and commitments pertaining to the area in the applicable implementation plan.[21] However, for purposes of section 181(a)(5), EPA needs to determine a reasonable interpretation in light of the fact that the statute, as written, does not fit the form of the 8-hour standard. Because Congress has addressed this issue elsewhere in the statute, EPA believes it is reasonable to adopt that formulation. Therefore, EPA would apply the same test under subparts 1 and 2 for determining whether to grant a 1-year extension, i.e., whether there was a minimal number of exceedances. For both subparts, EPA

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calendar year with maximum hourly average concentrations above 0.12 parts per million (235 $\mu g/m^3$) is equal to or less than 1 in order for the area to be considered attaining the standard, as determined by Appendix H to this part." Thus, the 1-hour standard is an "exceedance" based standard, since the number of exceedances of the standard (yearly average over 3 years under appendix H) must be equal to or less than 1. In contrast, see 40 CFR 50.10(b); the 8-hour standard for ozone is ". . . met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I to this part." Thus, this is a concentration-based standard, because meeting the standard is determined by calculating the concentration, not the number of exceedances as under the 1-hour standard.

[21]Memorandum of February 3, 1994, from D. Kent Berry re: "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas."

proposes to interpret this to mean for the 8-hour standard, the area would be eligible for the first of the 1-year extensions under the 8-hour standard if, for the attainment year, the area's 4th highest daily 8-hour average is 0.084 ppm or less. An area that has received the first of the 1-year extensions under the 8-hour standard would be eligible for the second extension if the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

3. How do attainment dates apply to Indian country?

As discussed elsewhere in this proposed rulemaking, the Tribal Authority Rule (TAR), 40 CFR 49.9 provides that Tribes should not be treated in a manner similar to States with regard to schedules, including the attainment dates. However, the TAR also requires EPA to develop Federal implementation plans (FIPs) where necessary and appropriate. 40 CFR 49.11. Because EPA believes that public health considerations are of primary concern, the attainment dates for primary NAAQS should be met. Therefore, EPA, in consultation with the Tribes, will work to ensure that the standards are addressed as soon as possible, considering the needs of the Tribes, and ensure that attainment in other jurisdictions is not adversely affected.

4. How will EPA establish attainment dates for areas classified as marginal under the "incentive" feature proposed under the classification section or areas covered under subpart 1 with a requested attainment date of 3 years or less after the designation date?

The EPA would ordinarily have established attainment dates for areas through a review of the SIP and whether attainment is as expeditious as practicable but no later than the date prescribed in the Act. Elsewhere in this notice, EPA is providing that marginal areas (under subpart 2) and areas under subpart 1 with an attainment date within 3 years after designation would not actually have to submit an attainment demonstration within 3 years after designation. Therefore, EPA must establish another procedure for establishing the attainment dates for these areas. The EPA is proposing the following procedure.

a. Areas that are classified marginal based solely on their 8-hour ozone design value. For these areas, EPA is proposing that the Clean Air Act's attainment date under Table 1 of section 181 would be the area's attainment date (namely, 3 years after designation).

b. Areas that are classified marginal based on the proposed incentive feature proposed elsewhere and areas covered under

subpart 1 with a requested attainment date of 3 years or less after the designation date. These are areas that are projected through modeling to attain within 3 years following designation. For these areas, EPA is proposing that these States must submit a SIP--within 1 year after designation--that provides documentation (viz., concerning the modeling and analyses that the area is relying on to support its claim) that the area will attain within 3 years following designation. Such a SIP submission must undergo the normal public hearing and comment procedures as for any SIP submission.

~~C.~~ [NOTE: THE FOLLOWING 2 SECTIONS ARE BEING REDRAFTED (WILL LIKELY BE COMBINED INTO ONE SECTION]

C. How will EPA transition from the 1-hour to the 8-hour standard?

~~1. Background~~

~~This issue deals primarily with two elements: the time for determining when the 1-hour ozone standard would no longer apply (i.e., revoking the 1-hour standard) as~~D. How will EPA ensure that the applicable requirements of the CAA continue to apply under the mechanism selected for transitioning from the 1-hour to the 8-hour standard ~~is implemented, and how to prevent backsliding after the 1-hour~~

~~standard is revoked. The first element is discussed in this section (section C), and the second in the next (section D). In addition, EPA identifies an approach for revocation that would combine these two concepts, i.e., retaining the 1-hour designation, and potentially the 1-hour NAAQS, for limited purposes in order to ensure that areas continue to make progress in lowering the levels of ozone pollution. The EPA specifically solicits comment on these alternative approaches.~~

~~At the time EPA promulgated the 8-hour ozone NAAQS in July 1997, EPA also issued a rule (40 CFR 50.9(b)) providing that the 1-hour standard would no longer apply to an area once EPA determined that the area had attained the 1-hour NAAQS. 62 FR 38856 (July 18, 1997). This process became known as "revocation" of the 1-hour NAAQS. The EPA interpreted that provision to mean that once the 1-hour standard was revoked, the area's 1-hour ozone designation also no longer applied. Due to the ongoing litigation concerning the 8-hour ozone NAAQS and EPA's implementation strategy for that standard, EPA subsequently modified 40 CFR 50.9(b) in part to provide that "after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour~~

standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard." See 65 FR 45181 (July 20, 2000).[21] Thus, currently, three criteria would need to be met before EPA could revoke the 1-hour standard for an area: (1) the 8-hour standard would need to be fully enforceable, (2) all legal challenges to the 8-hour ozone NAAQS would need to be resolved; and (3) EPA would need to determine that an area had attained the 1-hour standard.

The EPA is proposing to revise 40 CFR 50.9(b) to more appropriately reflect the implementation strategy that EPA ultimately develops. At the time that EPA initially promulgated 40 CFR 50.9(b), EPA contemplated that areas would not be subject to the planning obligations of subpart 2 for purposes of implementing the revised 8-hour ozone NAAQS. Furthermore, EPA stated that "as a matter of law," areas should continue to be subject to the planning obligations of subpart 2 until such time as they attained the 1-hour ozone NAAQS. Thus, EPA contemplated that the 1-hour NAAQS and the associated designation and classification under subpart 2 for an area would apply until the area had attained that standard and then such area would be subject only to the planning obligations of subpart

1. In light of the Supreme Court's ruling that EPA cannot ignore subpart 2 for purposes of implementing a revised ozone NAAQS, EPA believes it is appropriate to reconsider how to transition away from the 1-hour NAAQS (including what type of "anti-backsliding" provisions should apply) in light of the statutory structure of the CAA, as amended in 1990.

In determining how areas should transition from the 1-hour standard, EPA is considering which activities under an 8-hour ozone standard, including designations and classifications, would need to occur before EPA determines that the 1-hour ozone standard no longer applies to an area and the effect of revocation of the 1-hour standard on the area. The EPA believes that the key factor to consider in examining the effect of the revocation on an area's 1-hour designation and classification is whether, by revoking the standard and an area's designation and classification, the area would be able to "backslide" from existing obligations. Thus, the anti-backsliding approach EPA adopts (discussed below) will be a key consideration in determining the timing of when the 1-hour standard is revoked.

2. Timeframe for revoking the 1-hour standard

With regard to the time at which EPA should determine the 1-hour ozone standard no longer applies, the conformity

~~requirements appear to raise one of the most significant issues. The EPA's proposed anti-backsliding provisions, described more fully below, should ensure that air quality is not degraded and that areas continue to make progress toward cleaner air as they transition from the 1-hour standard to the 8-hour standard. In light of the anti-backsliding proposal below, EPA believes that it is appropriate to focus on conformity as the central issue in determining when the 1-hour standard will no longer apply to an area. The following presents a brief background on conformity.~~

~~Conformity is required in nonattainment areas, regardless of the area's classification and regardless of whether the area is subject to subpart 2 or only subpart 1. Conformity also applies to areas that were nonattainment and are subsequently redesignated to attainment and subject to a maintenance plan. These areas are called maintenance areas. Some areas that will be designated as nonattainment under the 8-hour ozone standard are currently nonattainment or maintenance areas under the 1-hour ozone standard. Some areas that will be designated as nonattainment under the 8-hour ozone standard will be "brand new," that is, they have never been designated nonattainment for the 1-hour ozone~~

~~standard.~~

~~Areas designated nonattainment for the first time for a new standard (e.g., the 8-hour ozone standard) have a 1-year grace period before conformity applies for that standard (i.e., a 1-year grace period before conformity applies for the 8-hour ozone standard). This 1-year grace period before conformity is required for the 8-hour standard applies to all areas designated nonattainment for the 8-hour standard, regardless of their 1-hour NAAQS designation status. Conformity obligations for the 1-hour ozone standard would remain applicable during the grace period and would not be affected by the designation of areas for the 8-hour standard.~~

~~The EPA plans to revoke the 1-hour ozone standard in a manner that will ensure, in conjunction with EPA's anti-backsliding policy, a smooth transition to the 8-hour ozone standard.~~

~~3. Proposed approach for timing of revocation of 1-hour ozone standard.~~

~~The EPA proposes to revoke the 1-hour ozone standard 1 year after the effective date of the designations for the 8-hour ozone NAAQS. This timing would coincide with the 1-~~

~~year grace period for application of conformity and would result in conformity applying for purposes of only one standard at a time. The EPA's intentions regarding conformity--as well as a more complete discussion of transportation conformity--appears elsewhere in this proposal. The EPA believes this proposal, tying the timing of revocation to applicability of conformity without regard to air quality in relation to the 1-hour standard, is appropriate because the anti-backsliding provisions will address concerns about continued progress toward cleaner air.~~

~~4. Other Approaches Considered~~

~~The EPA is considereding other approaches for the timing of the revocation of the 1-hour ozone standard. Since these are integrally linked to the proposed approach on anti-backsliding, these are discussed below in the proposal on anti-backsliding.~~

~~D. How will EPA implement the CAA's provisions for anti-backsliding?~~

~~The CAA contains a number of provisions that indicate that Congress did not intend to allow SIP revisions where such a revision would jeopardize air quality protection provided in the approved plan. The generally applicable~~

~~statutory provision that provides the measuring tool for SIP revisions is section 110(l), which provides that EPA may not approve a SIP revision if it interferes with any applicable requirement concerning attainment and RFP or any other requirement of the CAA. Congress created a tougher test for areas that might want to relax control requirements that were in their SIPs prior to the CAA Amendments of 1990. Section 193 of the CAA prohibits modification of control requirements in a SIP that was in effect or required at the time of the 1990 CAA Amendments unless such a modification would ensure equivalent or greater emissions reductions.~~

~~The EPA also believes that Congress set an additional statutory bar for 1-hour ozone areas that were designated nonattainment and classified at the time of the 1990 CAA Amendments. For these areas, Congress classified the areas "as a matter of law" and provided that even upon redesignation to attainment, such areas could not remove control measures from the SIP, but could shift them to contingency measures that would be implemented to "promptly correct any violation of the standard." For these reasons, EPA believes that although Congress gave EPA the power to revise the existing ozone standard, Congress did not open the door for States to remove SIP approved measures or to~~

avoid planning obligations with which they have not yet complied.

One other provision sheds light on Congress' intent. In 1990, Congress enacted section 172(e), which applies when EPA revises a NAAQS and makes it less stringent. This provision makes clear that in those circumstances, States cannot relax control obligations that are in the SIP.[22] Because Congress specifically mandated that control measures could not be relaxed when EPA relaxes a standard, EPA believes that they did not intend for control measures to be relaxed where EPA makes the standard more stringent.

The EPA also notes that in finding EPA's subpart 1-only implementation approach unlawful, the Supreme Court voiced concern that EPA not render subpart 2 "abruptly obsolete" because "Subpart 2 obviously was enacted to govern implementation for some time. . . . A plan reaching so far into the future was not enacted to be abandoned the next time EPA reviewed the ozone standard -- which Congress knew could happen at any time, since technical staff papers already had been completed in 1989." In response to the decision, EPA is now proposing to use subpart 2 in implementing the 8-hour standard. However, the classification systems EPA is proposing today would result

~~in many ozone nonattainment areas that are currently classified for the 1-hour standard being placed in a lower classification for the 8-hour standard. The EPA's proposed anti-backsliding approaches avoid rendering obsolete the congressionally specified control measure requirements of subpart 2 for 1-hour ozone nonattainment areas at a time when those areas have not yet met either of the health-based ozone standards.~~

~~1. How will the CAA's anti-backsliding provisions work regarding current CAA requirements under the 1-hour ozone standard?~~

~~The EPA proposes the following provisions to address the CAA's anti-backsliding provisions. Paragraphs a - e below address the obligations for areas that are designated nonattainment for the 8-hour ozone NAAQS and that were designated nonattainment for the 1-hour ozone NAAQS at the time of the 1990 CAA Amendments (including those that were redesignated to attainment). Paragraph f below addresses areas that are designated attainment for the 8-hour ozone NAAQS and that were designated nonattainment for the 1-hour ozone NAAQS at the time of the 1990 CAA Amendments (including those that were redesignated to attainment). Paragraph g below proposes two options for the time period~~

~~during which an area would continue implementing subpart 2-specified controls for its 1-hour ozone nonattainment classification.~~

~~a. Control obligations adopted in the SIP. The EPA believes that Congress intended each area that was classified for the 1-hour ozone NAAQS to adopt the specified control obligations in subpart 2 for the area's classification. Similarly, EPA interprets the mandated obligations in subpart 2 for purposes of an area's 1-hour ozone classification to remain "applicable requirements" for such areas by virtue of the area's classification "as a matter of law" in 1990. (Appendix D of this proposed rulemaking contains a list of the "applicable requirements" under subpart 2.) Under this interpretation, even after revocation of the 1-hour standard and the associated designations and classifications, section 110(l) would prohibit EPA from approving the removal of such a control obligation since it is "an applicable requirement of the Act."~~

~~For requirements in an approved SIP that are not specified under subpart 2 for the area (e.g., additional measures a State adopted to reach attainment), EPA believes that the State could remove such control obligations so long~~

as the State demonstrated that removal would not interfere with reasonable further progress/rate of progress (RFP/ROP), attainment of any applicable standard, or any other applicable requirement of the CAA. For example, a State may be able to modify a stationary source control measure if the State could show that it would still meet its RFP milestones, would attain the 8-hour NAAQS as expeditiously as practicable and by its attainment date and could show that such modification does not interfere with any reasonably available control technology (RACT) requirement for the source(s). However, if the measure had been approved into the SIP prior to November 15, 1990, the State would also need to demonstrate under section 193 that the requested modification would ensure equivalent or greater emissions reductions.

The control obligations in maintenance plans for areas that have been redesignated from nonattainment to attainment under the 1-hour ozone standard are also considered part of the 1-hour ozone SIP.[23] If EPA selected the option (discussed in subsection f., below) that control obligations required under subpart 2 remain "applicable requirements" until an area attains the 8-hour ozone NAAQS, then section 110(l) would prohibit States from removing those control

~~obligations from the SIP until such time as the area attains the 8-hour standard. However, if EPA selects the option that control obligations under subpart 2 remain "applicable requirements" until such time as the area attains the 1-hour standard, these areas -- which by definition attained the 1-hour standard -- could modify those requirements so long as the State demonstrates that the conditions in section 110(l) and section 193 have been met. Similarly, any control obligations in the approved SIP that were not mandated by subpart 2 could be modified if the State demonstrates that the conditions in section 110(l) and section 193 have been met.~~

~~The EPA is proposing that other components of the maintenance plan obligation under section 175A no longer apply once the 1-hour standard is revoked: the requirement to implement contingency measures upon a violation of the 1-hour ozone standard, the requirement to submit a revised maintenance plan 8 years after redesignation to attainment, and the requirement to demonstrate conformity to the budget in the approved maintenance plan. The EPA believes that it is unnecessary for these areas to submit a new maintenance plan for purposes of maintaining a standard that is not the standard EPA has determined is necessary to protect public~~

health and the environment. Furthermore, to the extent these areas are designated nonattainment for the 8-hour standard, EPA believes this burden would detract from the planning States need to do to meet the 8-hour ozone NAAQS. Therefore, once the 1-hour standard is revoked, EPA is proposing that the area is no longer required under section 175A to submit a revised maintenance plan 8 years after being redesignated for the 1-hour standard. Furthermore, since the area would no longer be subject to the maintenance plan requirement of section 175A for purposes of the 1-hour standard, under the conformity provisions of the statute, the area would no longer be subject to conformity for the 1-hour standard.[24] Similarly, EPA does not believe that it makes sense to require areas to implement contingency measures for the purpose of bringing air quality back to levels that comply with the revoked 1-hour standard. Therefore, under this proposed approach, after revocation of the 1-hour ozone standard, States could submit SIP revisions, if needed, to eliminate these obligations under the 1-hour maintenance plan.

Note that the above proposal applies regardless of whether an area is designated attainment or nonattainment under the 8-hour ozone standard. However, the EPA is

proposing two alternatives for how long the obligation for an area to meet the "applicable requirements" under the 1-hour standard must continue in effect. These are described in subsection f., below.

b. Subpart 2 control obligations and ozone transport control obligations not yet met. If a State has an outstanding obligation to submit a control measure specified in subpart 2 by virtue of its classification for the 1-hour ozone NAAQS, EPA is proposing that the State would still be obligated to submit such a measure. Even after EPA revokes the 1-hour ozone standard for areas, which means such areas would no longer be designated as nonattainment and classified for the 1-hour standard, States would remain obligated to submit control measures that were mandated by virtue of their 1-hour classification ("applicable requirements") discussed in "a" above. Furthermore, EPA believes it would be inequitable for areas that have adopted all subpart 2 specified measures if areas that had not yet adopted a 1-hour subpart 2 specified measure were excused from their obligation.

The EPA proposes that the same logic applies to require any State subject to the requirements of the ozone transport rulemaking, described below, to continue to be subject to

those requirements, if such State has not already met such requirements.

c. RFP/ROP and Attainment SIPs for 1-Hour NAAQS. By and large, areas have already submitted RFP/ROP plans and attainment SIPs for the 1-hour ozone NAAQS. Unlike control obligations, which Congress indicated that States must continue to retain in SIPs even after redesignation to attainment, Congress provided more flexibility with respect to planning programs that were geared to demonstrating how progress would be made toward attainment and how attainment would be reached. Areas will be developing new RFP/ROP programs for purposes of the 8-hour NAAQS and their resources should generally be focused on such. The EPA believes that the planning obligations for purposes of the 1-hour standard remain in place until they no longer are "applicable requirements." At that time, consistent with EPA's existing policy, EPA believes the RFP/ROP and attainment demonstration requirements could be waived.[25] The EPA provides a more detailed proposal on each of these RFP/ROP requirements elsewhere in this proposed rulemaking in the section dealing with RFP.

For ROP/RFP, States remain obligated to submit plans to demonstrate how they will meet the subpart 2 ROP/RFP goals

through their attainment date for the 1-hour standard until such time as the 1-hour standard is revoked.[26] (As noted above, in general these plans have already been submitted. However, there is ongoing litigation regarding the validity of a few of these plans and there currently are a few areas that may still need to submit such plans.)

Unlike control obligations, which EPA believes Congress mandated for these areas based on their 1-hour classifications, EPA does not believe that Congress would have intended areas to submit attainment demonstrations for the 1-hour NAAQS after that NAAQS is revoked. These areas will be developing SIPs to attain the 8-hour NAAQS within a few years following designation for that standard and should not have the added burden of developing a complicated modeled attainment demonstration for the 1-hour NAAQS, which is no longer the applicable health-based standard. (With a limited number of exceptions, all areas have already submitted attainment demonstrations for the 1-hour NAAQS; however, it is possible that ongoing litigation could result in an obligation for one or more additional areas to submit revised attainment demonstrations.)

Although EPA is proposing that areas need not submit new 1-hour attainment demonstrations where one is not

approved as part of the SIP, EPA does believe that areas that have committed to perform a mid-course review in an approved 1-hour attainment demonstration SIP remain obligated to perform those reviews. These analyses will be beneficial for purposes of developing 8-hour attainment demonstrations as they require a State to examine existing controls to determine whether they are being implemented and whether they are achieving the level of reductions that was anticipated at the time the SIP was submitted. In determining whether an area needs to take further action based on the results of the mid-course review, EPA anticipates it will consider the area's planning activities for the 8-hour ozone NAAQS.

d. New source review (NSR). An area may be classified with one subpart 2 classification (or under subpart 1) under the 8-hour standard, but is currently classified higher under subpart 2 under the 1-hour standard. Under such a situation, EPA sees no rationale under the CAA given the apparent Congressional intent for areas "classified by operation of law" why NSR should not remain an "applicable requirement" for the portion of the 8-hour nonattainment area that was classified higher for the 1-hour standard. The EPA is therefore proposing that an area that was

~~designated nonattainment for both the 1-hour standard and the 8-hour standard would continue to be subject to the NSR requirements that applied under its classification for the 1-hour standard. For example, if an area is classified moderate under the 8-hour standard, but is currently severe under the 1-hour standard, the portion of the 8-hour nonattainment area that was classified severe for the 1-hour standard would remain subject to an offset ratio of 1.3:1 and a major source threshold of 25 tons/year; the remaining portions of the 8-hour area would be subject to the offset ratio for moderate areas (1.15:1) and the moderate area major source threshold (100 tons/year).~~

~~e. Nonattainment and maintenance areas for the 1-hour standard that are designated attainment for the 8-hour standard. For areas that EPA designates as attainment for the 8-hour standard and that remain designated nonattainment for the 1-hour standard up to the time EPA revokes the 1-hour ozone standard, EPA received comment during the public meetings and in subsequent written comments voicing support for requiring such areas to submit maintenance plans prior to EPA revoking the 1-hour ozone standard; some of these commenters also suggested retaining the conformity obligation for the area. Other commenters, however, opposed~~

~~retaining any planning or control obligations for these areas other than what is already approved into the area's SIP. (See the section below in this proposed rulemaking on transportation conformity, in which EPA is proposing that conformity would not apply in areas that currently are covered by a maintenance plan under the 1-hour ozone standard but would be designated attainment under the 8-hour ozone standard.) Based on ambient ozone data for the period 1998 to 2000 for the hypothetical nonattainment areas, EPA identified approximately least 20 areas in this situation (areas that are currently designated nonattainment under the 1-hour standard but that will likely be designated attainment under the 8-hour standard). As noted above, the anti-backsliding provisions would apply to areas designated attainment for the 8-hour standard as well as areas designated nonattainment.~~

~~f. Proposed options for the time period during which an area would continue implementing subpart 2-specified controls for its 1-hour ozone nonattainment classification. The EPA is proposing two options for this time period:~~

~~(i) Option 1. When the area achieves the level of the 1-hour ozone standard (even if the 1-hour standard has been revoked before that time). The rationale for this option is~~

~~that Congressional intent was for the "applicable requirement" to continue to the time the area attained the 1-hour standard.~~

~~(ii) Option 2. When the area attains the 8-hour standard and is designated attainment (even if the level of the 1-hour standard is not reached). The rationale for this option is that the 8-hour standard is more stringent for nearly all areas than the 1-hour standard, and it would be counterintuitive to relax requirements Congress mandated for the 1-hour standard for implementation of a more stringent standard. One implication of this option is that the "applicable requirements" under the 1-hour ozone standard would cease for all areas upon designation to attainment under the 8-hour ozone standard, including the initial designation EPA anticipates in 2004. (The anti-backsliding provisions of section 110(l) and section 193 of course would still apply with regard to control obligations in an approved SIP.)~~

~~2. Alternative Approaches~~

~~The EPA has considered other options for addressing the timing of revocation and anti-backsliding. Discussion of the range of options EPA considered appears in a separate document, available in the docket.[27] EPA specifically~~

~~solicits comment, however, on one set of alternative approaches that would achieve a similar, or the same, result as intended by the approach EPA proposed above, but through alternative mechanisms. First, EPA is considering whether it would be appropriate to retain the 1-hour designations and classifications (and perhaps the 1-hour standard as well) for limited purposes for the period of time necessary to ensure those purposes are achieved. In other words, for purposes of ensuring that areas that were designated nonattainment and classified for the 1-hour standard retain the current obligations that were mandated by subpart 2, would it make more sense to retain the area's 1-hour designation and classification for the limited purpose of ensuring compliance with those requirements during the period that the area has air quality that violates the 1-hour NAAQS? As provided above, EPA believes that Congress initially intended these requirements to continue to apply "as a matter of law," and the 1-hour designations and classifications are the mechanism Congress identified for triggering the applicability of these requirements, at least in the circumstances present when the requirements were enacted. As with the revocation/antibacksliding approach above, however, EPA does not anticipate that it would retain~~

~~the 1-hour designations (or classifications) for purposes of requiring these areas to develop rate of progress and attainment plans for the 1-hour standard, or requiring them to do conformity analyses for the 1-hour standard after the conformity requirements for the 8-hour standard begin to apply. Rather, EPA would retain only those obligations that would provide benefits for attainment of the 8-hour standard and not divert resources from planning to attain the 8-hour standard.[28]~~

~~Second, EPA is also soliciting comment on the alternative of retaining the 1-hour standard itself (and the associated designations and classifications), at least for certain purposes, for a longer period of time after designations for the 8-hour ozone standard as a means to prevent air quality from degrading. A number of commenters in the pre-proposal phase recommended this type of approach to EPA. In addition, retaining the 1-hour standard for a longer period of time could serve as a contingency in the event that the 8-hour standard or the implementation rule for it are affected by litigation. One State in particular informed EPA of its objection to revoking the 1-hour standard based on the concern that this may weaken current requirements.[29] As mentioned previously, EPA took a similar~~

approach in its 1997 rule for transitioning to implementation of the 8-hour standard. Specifically, EPA retained the 1-hour standard and the associated nonattainment designations and classifications for areas that had not yet met that standard, but lifted certain 1-hour requirements that would otherwise have applied by virtue of those classifications -- the requirement for states to demonstrate attainment for the 1-hour standard and the requirement for EPA to apply the reclassification ("bump-up") provisions for the 1-hour standard. In addition, under this approach, EPA could retain the 1-hour standard and associated designations (until areas attain that standard) for the additional purpose of ensuring that upwind areas remain obligated to achieve the emission reductions mandated by EPA's NOx SIP Call and section 126 rules, since the emissions reductions from those rules will help many downwind areas attain even the 8-hour standard. EPA's NO_x SIP call and section 126 rules were designed to prevent upwind NOx emissions from contributing to nonattainment in a downwind area for both the 1-hour and 8-hour ozone NAAQS. The EPA, however, stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone

~~standard. While EPA intends to take rulemaking action to lift the stays of the 8-hour bases for those rules, EPA believes it may make sense to retain the 1-hour standard and designations for purposes of retaining the 1-hour-based NOx SIP Call as an applicable requirement as the Agency moves forward on that rulemaking -- and for so long as the 8-hour basis for the SIP call remains subject to legal challenge -- in order to ensure that States continue to meet their obligation to address transported emissions in the manner required by the NOx SIP Call regardless of the outcome of such a challenge. However, EPA notes that even if it does not retain the 1-hour standard and designations for this purpose, upwind States could not roll back their approved SIP Call controls unless they demonstrated under section 110(l) that such rollback did not interfere with attainment, maintenance or any other applicable requirement of the Act, including their obligation under section 110(a)(2)(D) to prohibit emissions that contribute significantly to downwind nonattainment of any standard.~~

~~The EPA solicits comments on these and other approaches regarding revocation of the 1-hour standard. The EPA also solicits comment on whether to retain the limit in current 40 CFR 50.9(b) that the 1-hour standard will not be revoked~~

~~for any area until the 8-hour standard is no longer subject to legal challenge.~~

~~In essence, all of the various options set forth in section 1 above and in this section are aimed at the same basic results -- ensuring the continued applicability of the prescribed control requirements in subpart 2 and ensuring continued progress under the NOx SIP call, while shifting the focus of areas from performing modeling and other planning analyses keyed to the level of the 1-hour standard to doing such analyses in relation to the 8-hour standard at an appropriate time (for example, in the case of the conformity requirements, on the date 1 year after EPA promulgates the 8-hour designations, which is when the conformity requirements apply for purposes of the 8-hour standard). The main difference among the options is the legal mechanisms EPA would use to achieve those results. For that reason, EPA solicits comment on whether it should promulgate implementation provisions that rely for their legal basis on several alternative statutory bases and mechanisms, rather than on just one such set of grounds and mechanisms. That approach might maximize the assurance that EPA and the states could achieve the overriding objective of preventing backsliding in statutory and SIP requirements~~

~~while achieving a smooth transition to implementation of the new standard.~~

~~3. How will EPA ensure that the public knows which areas must continue provisions under the 1-hour SIPs under the anti-backsliding provisions?~~

~~In the same action where EPA revokes the 1-hour ozone standard, including the attainment/unclassifiable and nonattainment designations, the Code of Federal Regulations (CFR) would retain the definition of the 1-hour nonattainment and maintenance areas. The reason for this is to make clear which areas must continue certain requirements from their 1-hour ozone SIPs to meet the anti-backsliding provisions. In other words, the list of the areas and their boundaries where the 1-hour attainment or maintenance SIPs apply would be printed in the CFR, although there would be no 1-hour nonattainment (or attainment/unclassifiable) areas afterwards.~~

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E. Should prescribed requirements of subpart 2 apply in all 8-hour nonattainment areas classified under subpart 2, or is there flexibility in application in certain narrowly defined circumstances?

1. Background

The 1990 CAA Amendments overhauled the CAA's requirements for ozone nonattainment areas and, in doing so, specified new mandatory measures for many areas. The new approach embodied in subpart 2 was to classify areas according to the severity of their pollution. Areas with more serious ozone pollution were allowed more time to meet the standard - but were required to adopt more numerous and stringent measures depending on their classification. Congressional proponents of this approach argued that specifying mandatory measures in the statute was necessary because States and EPA, prior to 1990, had failed to ensure that SIPs achieve steady reasonable progress in reducing emissions or to require readily available measures that were cost effective and needed to meet the standard.

Mandatory subpart 2 requirements for moderate and higher-classified areas include, for example, specific ROP requirements (including a 15 percent VOC reduction for moderate and above areas), basic I/M programs, a requirement that sources subject to NSR —obtain emissions offsets at a ratio of 1.15-to-1, and RACT for NO_x sources as well as VOC sources. Serious and severe areas are subject to additional measures such as further ROP requirements, applicability of NSR to smaller sources, enhanced I/M, and applicability of

RACT to smaller sources. (Appendix ~~B~~A presents a summary comparison of measures under subparts 1 and 2.)

For the proposed 8-hour ozone implementation strategy, EPA has examined the issue of mandatory measures from both legal and policy standpoints. The EPA's legal view is guided by the Supreme Court decision. The Court held that Congress drastically limited EPA's discretion on whether the mandatory requirements of subpart 2 will apply to 8-hour areas by concluding that the classification scheme of subpart 2 applied for purposes of a revised ozone NAAQS. ATA I, 175 F3d at 1048-1050.

As discussed elsewhere, the Supreme Court decision states that subpart 2 provides for classification of areas under the 8-hour standard. With respect to the requirements of subpart 2, the Supreme Court stated, "The principal distinction between Subpart 1 and Subpart 2 is that the latter eliminates regulatory discretion that the former allowed." Whitman 121 S.Ct. at 918. The Court went on to state, "Whereas Subpart 1 gives the EPA considerable discretion to shape nonattainment programs, Subpart 2 prescribes large parts of them by law." Id. The Court also stated, "EPA may not construe the statute in a way that completely nullifies textually applicable provisions meant

to limit its discretion." Id. 918-919.

Once an area is classified under subpart 2, the subpart 2 requirements apply. The EPA may have some limited ability to change or limit subpart 2 controls, consistent with the statutory language, but EPA cannot broadly waive those requirements. For example, EPA may have some flexibility to modify regulatory requirements for programs such as NSR (discussed elsewhere in this proposed rulemaking). Furthermore, subpart 2 provides discretion to EPA in implementing certain provisions already, such as waivers for stage II vapor recovery, NO_x RACT and NO_x NSR. In addition, case law may provide EPA with some flexibility to waive federally applicable requirements on a case-by-case basis where application of those requirements would produce an "absurd result."

With respect to policy considerations, some commenters at public meetings or in written submissions to EPA have expressed the view that mandatory measures are needed to ensure actions are taken, but a number of commenters have raised concerns. These include whether mandated VOC controls will be appropriate for all areas in the future, and whether mandatory measures are appropriate in areas projected to attain in the near term. A number of

commenters recommended that EPA allow for flexibility in implementing the 8-hour ozone standard and not require mandatory measures, such as local VOC measures, where they would not be very effective in achieving attainment of the standard. In many cases, particularly for areas that would be new nonattainment areas under the 8-hour standard, region-wide NO_x controls and national controls on mobile sources are predicted to greatly reduce the areas' ozone levels and to bring many into attainment without additional local emission controls.

Although a number of comments were received on the issue of flexibility, many commenters on this issue took the position that they would prefer areas to be classified under subpart 1 rather than subpart 2. Some commenters did recommend that EPA make the argument that new information about the relative benefits of NO_x and VOC control would lead to allowing more tailored controls for a number of areas, rather than the one-size-fits-all approach of subpart 2. However, commenters did not suggest how the CAA could be interpreted to allow the flexibility they were advocating for the mandatory requirements of subpart 2. Other commenters argued that the subpart 2 measures are mandatory under the CAA for areas classified under subpart 2 and that

the CAA does not provide flexibility to waive those requirements.

Regarding the VOC/NO_x issue, EPA observes that scientific understanding of ozone pollution and the impact of control strategies has improved over time. Prior to 1990, the main focus of ozone control strategies was VOC control. Since then, scientific studies have more clearly recognized the role of NO_x, biogenic emissions, and transport of ozone and NO_x in ozone nonattainment. In response, EPA's ozone strategy for the 1-hour standard evolved to put greater emphasis on controlling NO_x in addition to VOC and to require control of NO_x emissions that contribute to interstate ozone problems.

The EPA recognizes that the relative effectiveness of VOC and NO_x controls will vary from area to area, depending significantly upon VOC/NO_x ratios in the atmosphere. Current scientific information shows that VOC reductions will reduce ozone in urban areas and in other areas where there is excess NO_x available for reaction. Ozone levels in areas that are less urban and have lower NO_x emissions, or that have high biogenic VOC levels, may be more sensitive to NO_x control and less sensitive to VOC control. Because ozone formation is greatly affected by meteorological

conditions and source/receptor orientation, ozone formation may be limited by either VOC or NO_x concentrations at different times and locations within the same area.

In order to support the approach proposed below, EPA solicits relevant technical information on this issue from States and others.

2. Approach being proposed

In line with the legal interpretation above, EPA is proposing that subpart 2 requirements would apply to ~~all~~each area~~s~~ classified under subpart 2 consistent with the area's classification. However, today's proposal contains several features intended to provide States with flexibility on the measures required to be included in SIPs for 8-hour areas.

First, as explained in the section on classifications above, proposed classification option 2 would result in a number of areas being classified under subpart 1 rather than under subpart 2. Second, for both classification options, EPA is proposing an incentive feature that would allow areas to qualify for a lower classification with fewer mandatory requirements if the area could show it will meet the standard by the deadline for the lower classification. This would, for example, allow any area projected to attain by 2007 based on existing federal measures and any State or

local measures approved into the SIP to be classified as marginal and to avoid subpart 2 mandatory measures--some of which may be significant--that apply to higher classifications.

Under either of EPA's proposed classification frameworks, a majority of potential 8-hour areas would not be subject to significant subpart 2 mandatory measures because they would be classified marginal or lower. Based on EPA's analysis of hypothetical nonattainment areas, there would be fewer than 10 potential 8-hour nonattainment areas classified "serious" or above, and these areas already are implementing requirements applicable to serious or above areas for the 1-hour standard. Therefore, the main impact of subpart 2 mandatory measures in 8-hour implementation would be on (1) areas that are classified as moderate, and did not have to meet moderate or above requirements for the 1-hour standard, (2) areas classified as moderate or above that would be subject to ROP requirements for the 8-hour NAAQS, and (3) new counties or areas included as part of a serious or higher classified nonattainment area.

As a third flexibility mechanism, EPA is proposing to consider allowing case-by-case waivers when sufficient evidence is presented that application of a specific

requirement in a particular area would cause absurd results. Evidence of an absurd result might, for example, include a modeled demonstration that future VOC reductions required under subpart 2 for a particular area would actually cause ozone to increase more than a de minimis amount and therefore increase the amount of NO_x emissions reductions needed for the attainment demonstration. Such a showing would also have to account for the potential benefits of the mandated controls in downwind areas in determining whether on the whole the application of the subpart 2 measure would produce an absurd result.

The EPA believes that absurd results will happen only rarely in those cases where application of the requirement in that area would thwart the intent of Congress in enacting the relevant provisions of the CAA. In such cases, EPA may be able to provide limited relief to the area, but only to the degree needed to protect Congressional intent. For example, EPA believes that the purpose of the 15 percent VOC ROP requirement is to ensure that areas make progress cleaning up their air and moving toward their goal of attainment in the first 6 years following the emissions baseline year. If an area could demonstrate that reductions in VOC would provide no progress toward attaining the

standard, EPA may be allowed to interpret the statute to allow for reduction in NO_x emissions instead. The EPA could not, however, simply waive the requirement for the area to meet the ROP goals of the CAA. Moreover, it would not be sufficient for the area to show that VOC reductions would be less beneficial than NO_x reductions. While one might contend that such a result is not the most logical result, it is not absurd. The above example is a simplistic example--application of the absurd results test in any specific situation would likely be more complex. In any specific situation, EPA would need to consider all of the facts in light of various statutory provisions. For example, EPA would need to consider that another goal of the SIP provisions in the CAA is to mitigate transport of ozone (and ozone precursors). Therefore, in determining whether there is an "absurd result," EPA would not only need to consider the implications for the specific area asserting an absurd result, but also the effects on downwind areas.

A State attempting an absurd results demonstration would have to work very closely with EPA to ensure that the demonstration passes the highest standards of technical credibility. If EPA had information that the agency believes supports an absurd results showing, EPA would make

that information available to the State. The State would, of course, have to subject this demonstration to the same public process carried out for the SIP submission itself prior to submission to EPA of the SIP containing the demonstration. In no way would this waiver exempt an area from the requirement to demonstrate attainment by the attainment date or to demonstrate RFP toward attainment consistent with the area's classification. The EPA would have to review the State's demonstration as to whether the result is "absurd" in light of the particular statutory requirement at issue and within the context of the statute as a whole. Simply because a State may demonstrate an absurd result for purposes of meeting one statutory provision, such as the requirement for a 15 percent VOC reduction within 6 years after a base year, this does not imply that some other provision of the CAA that requires VOC reductions is automatically considered "absurd."

3. Other Approaches Considered

The EPA considered a number of other options for allowing additional flexibility for subpart 2 requirements. These other options that were considered but are not being proposed are described in a separate document available in

the docket.[22]

F. What is the required timeframe for obtaining emissions reductions to ensure attainment by the attainment date?

Section 172(c)(2) of the CAA requires that emissions reductions needed for attainment be phased in such that RFP toward attainment is achieved. For areas classified as moderate under subpart 2, their attainment date would be as expeditiously as practicable but no later than 6 years after the date of classification. Their ROP requirement would be at least a 15 percent VOC emissions reduction from the base year to be achieved no later than 6 years after the base year. However, if the area needed more than 15 percent VOC reductions in order to demonstrate attainment, then any additional reductions would also have to be achieved by the area's attainment date.

States should be aware of the consequences of failing to implement the control measures necessary for attainment sufficiently far in advance of the attainment date. For areas covered under subpart 2, section 181(a)(5) of the CAA

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[22]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. January 2003.

does allow for up to two 1-year attainment date extensions in certain circumstances. The EPA is proposing how those extension provisions would be implemented elsewhere in this notice under the discussion of attainment dates. To obtain the first of the 1-year extensions, the CAA basically requires that the ~~attainment year itself~~area be meeting the level of the standard in the attainment year itself, even if ~~it~~the area has not actually attained considering the most recent 3 years of data. Thus, the States should ensure that the emissions reductions be implemented to ensure that ozone levels for the ozone season preceding the attainment date are below the level of the standard. If an area does not meet the eligibility requirements for a 1-year extension (as proposed elsewhere in this notice) in the attainment year, then the area would not be eligible for an attainment date extension, and EPA would have an obligation to reclassify the area to a higher classification ("bump-up"). A marginal area with an attainment date 3 years after its nonattainment designation that fails to attain would be subject to bump-up to at least moderate, and would then have to prepare a plan to attain within 3 years afterward (6 years after their nonattainment designation).

There is further discussion of this situation as it

relates to the 1-hour ozone standard in the General Preamble of April 16 1992 (57 FR 13498, 13506); this discussion may have some applicability to the 8-hour standard.

Areas covered under subpart 1 are also able to obtain up to two 1-year extensions of the attainment date (see section 172(a)(2)(C)). There is no provision for bump-up in classification similar to that under subpart 2. However, if an area fails to attain, section 179 of the Act provides that EPA publish a finding that the area failed to attain. The State then must submit within one year after that publication a revision to the SIP that provides for attainment within the time provided under section 179. Section 179 also provides that the SIP revision must also include any additional measures that EPA may prescribe.

G. How will EPA address long-range transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?

1. Background.

Although much progress has been made to improve air quality, many States contain areas that have yet to attain the 1-hour ozone standard and/or that are violating the 8-hour ozone standard. Some areas are significantly affected by interstate ozone transport from upwind areas. Wind

currents can transport ozone and NO_x, a primary precursor to ozone, long distances, affecting multiple States downwind of a source area. Legal and equity issues result when failure to control upwind sources creates a need for greater emissions reductions from local sources in order for a downwind area to achieve the ambient air quality standard. In some cases, a downwind area may not be able to attain the ozone standard until the transported emissions are controlled.

The 1990 Amendments to the CAA reflect general awareness by Congress that ozone is a regional, and not merely a local, problem. Section 110(a)(2)(D) provides one of the most important tools for addressing the problem of transport. This provision provides that a SIP must contain adequate provisions prohibiting the State's sources from emitting air pollutants in amounts that will contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind States. Section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement. If EPA makes such a finding, it must require the State to submit, within a specified period, a SIP revision to correct the inadequacy. The CAA further addresses interstate transport of pollution

in section 126, which authorizes each State to petition EPA for a finding designed to protect that entity from upwind sources of air pollutants.

In the past several years, EPA has conducted two rulemakings to control interstate ozone transport in the eastern U.S. In 1998, EPA issued the NO_x SIP Call, which requires certain States in the eastern U.S. to meet Statewide NO_x emissions budgets (63 FR 57356, October 27, 1998. State programs to implement the rule focus on reducing emissions from electric power generators and large industrial emitters. In addition, in response to petitions submitted by several northeastern States under section 126 of the CAA, EPA issued the Section 126 Rule which established Federal control requirements for electric power generators and industrial boilers and turbines in upwind States (64 FR 28250, May 25, 1999 and 65 FR 2674, January 18, 2000). For both rules, the compliance date for achieving the required NO_x reductions is May 31, 2004. These two transport rules overlap considerably, with the NO_x SIP Call being the broader action affecting more States. All of the States affected by the Section 126 Rule are covered by the NO_x SIP Call. Therefore, EPA coordinated the

two rulemakings and established a mechanism in the Section 126 Rule whereby that rule would be withdrawn for sources in a State where EPA approves a SIP meeting the NO_x SIP Call.[23] In the NO_x SIP Call and the Section 126 Rule, EPA made determinations of whether upwind sources are significantly contributing to downwind nonattainment problems under both the 1-hour and 8-hour ozone standards. In the final SIP call rule, EPA determined that the same level of reductions was needed to address transport for both the 1-hour and 8-hour standards. Under the Section 126 Rule, more States and sources are affected based on the 8-hour standard than the 1-hour standard. The EPA, however, stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard. The EPA will be addressing the 8-hour stays since ~~o~~On December 18, 2002, EPA responded to the ~~Administrator has signed final rulemaking on the UV-B issue, which was remanded to EPA in~~ ATA I~~, 175 F.3d 1027.~~

[23]As a result of court actions, certain circumstances upon which the Section 126 Rule withdrawal provision was based have changed. The compliance dates for the Section 126 Rule and the NO_x SIP Call have been delayed and the NO_x SIP Call has been divided into two phases. The EPA is currently conducting a rulemaking to update the withdrawal provision so that it will operate appropriately under these new circumstances.

~~The EPA anticipates it will~~one issue the D.C. Circuit Court ordered EPA to reconsider regarding the 8-hour ozone NAAQS and reaffirmed the 8-hour ozone standard (68 FR 614 (January 6, 2003) Now that the litigation on the 8-hour standard has been resolved, EPA intends to take action to reinstate the 8-hour bases for both the NO_x SIP Call and the Section 126 Rule. These would then provide the initial basis for dealing with ozone transport as part of the implementation of the 8-hour standard.

In providing their views to EPA on the 8-hour ozone implementation rule, the Ozone Transport Commission (OTC) and other State commenters have told EPA that further steps are needed to reduce interstate transport of ozone and NO_x to assist downwind areas in meeting the 8-hour ozone standard. These commenters voiced concern about upwind emissions from power plants and other sources and transported pollution from upwind cities. These commenters have urged EPA to ensure that interstate transport of ozone and NO_x is addressed "up front," before 8-hour attainment SIPs are adopted. This approach would enable States to know what reductions will be required for purposes of reducing interstate pollution transport when they decide the quantity of emissions reductions needed and specific measures to be

included in a local area's attainment SIP.

2. The EPA's Proposed Approach.

The EPA agrees that transport of ozone and its precursors should be dealt with "up front." As described above, EPA in 1998 promulgated the NO_x SIP call and took action on the section 126 petitions to define what States within the SIP call region must do to address the transport of ozone and NO_x for purposes of both the 1-hour and 8-hour standards. In response to questions raised about whether those actions were sufficient, EPA plans to conduct updated analyses to examine whether residual interstate ozone transport after the NO_x SIP call is implemented will significantly contribute to nonattainment in downwind areas. If, based on these analyses, EPA determines that significant transport would still exist, EPA would require additional reductions to address such significant transport.

As described in the Federal Register actions for the NO_x SIP call and section 126 rulemakings, EPA believes that it has the authority to define what States need to do to address interstate transport in advance of decisions regarding the designation of areas and in advance of the submission of SIPs to comply with the section 110 requirements for the 8-hour ozone standard. ~~The EPA~~

~~currently intends~~[THE REMAINDER OF THIS PARAGRAPH IS UNDERGOING REVISION] The EPA is contemplating whether to consider the issue of ozone transport in the context of a possible transport rulemaking ~~being initiated to~~that could address the transport of $PM_{2.5}$ precursors, including NO_x, since NO_x affects ambient concentrations of both $PM_{2.5}$ and ozone. ~~As part of that~~If such a rulemaking is undertaken, EPA ~~intends to~~would conduct further analyses of ozone transport that could result in further requirements beyond the existing NO_x SIP Call. In the analyses, EPA would take into account the future NOx reductions that will be provided by the Tier 2 motor vehicle standards, the heavy-duty diesel engine standards, and other Federal regulations. Addressing $PM_{2.5}$ and ozone transport together in ~~that~~such a rulemaking ~~will~~would provide an opportunity for the coordination of control efforts to help achieve attainment of both the $PM_{2.5}$ and 8-hour ozone standards, both of which will rely on control of pollutants transported across State boundaries. The EPA ~~expects to propose the new transport rule by December 2003 and promulgate the rule between January and June of 2005. The EPA welcomes~~would welcome the input from States and other interested parties in ~~that rulemaking as~~such a rulemaking--if undertaken--as to how to deal with

ozone transport effectively and equitably and on the technical and other issues that will have to be confronted as part of an evaluation of what further steps should be taken beyond the existing NO_x SIP Call to deal with ozone transport.

The EPA further notes that the proposed CSA, if enacted, ~~—~~would significantly reduce power generator NO_x emissions that EPA modeling shows will affect regional ozone levels after the NO_x SIP Call. The EPA modeling for the year 2010 shows that the 2008 Phase I NO_x limits on power generators in the proposed CSA would reduce maximum 8-hour ozone levels in many parts of the eastern U.S., including a number of areas likely to be designated nonattainment for the 8-hour standard. The modeling results are available on the web at www.epa.gov/clearskies.

Regardless of whether Congress enacts the CSA in a timely manner, the CAA requires States to develop SIPs that provide for attainment by deadlines in the CAA and requires States to have implementation plans that prohibit emissions that contribute significantly to nonattainment in other States. ~~—To help implement these provisions of the CAA and achieve the objectives of clean air as expeditiously as practicable, EPA intends to address the issue of interstate~~

~~transport in the context of the transport rulemaking described above.~~

3. Other Concerns about Transport.

[FOLLOWING SENTENCE WILL BE REVISED] The EPA realizes that even ~~after promulgation of~~if a new national transport rule is pursued by EPA, attainment demonstrations for some areas— would continue to be complicated by the effects of ozone and transport from upwind sources and other nonattainment areas in cases where upwind source controls are scheduled for implementation after the downwind area's attainment date (e.g., 2007 attainment date).

Downwind areas could be in one of two situations. In the first situation, an area might be receiving such high levels of transported ozone or ozone precursors that even if it reduced its emissions dramatically (e.g., totally eliminated its own emissions), the incoming ozone and precursors would be sufficient to continue to cause violations of the standard beyond the applicable attainment date. In the second situation, the area might be able to achieve additional local reductions sufficient to demonstrate attainment. In this second case, the question arises as to whether it is equitable to require those reductions or to allow more time for the reductions in the

"upwind" area to take place.[24]

The EPA solicits comment on how to address this issue. The EPA believes that a subpart 1 area could be granted a later attainment date if warranted considering transport. For areas classified under subpart 2, the statute provides no express relief for these situations. The area does have the option of requesting to be classified to the next higher classification. Thus, where the demonstration of attainment is complicated by transport between two areas of different classifications, the State is still responsible for developing and submitting demonstrations which show that the standard will be attained by the applicable date. In other words, the State must provide for sufficient emissions reductions on a schedule that will ensure attainment in its area.

One approach would be for States to work together in a collaborative process to perform the necessary analyses to

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[24]The CAA's requirement for reasonably available control measures (RACM) in section 172(c)(1) does require the SIP to include RACM; EPA has noted in policy elsewhere that a measure is RACM if it is technologically and economically feasible and if it would advance the attainment date. Thus, if there are measures available in the nonattainment area that would advance the attainment date--even if attainment is likely at a later date due to upwind emission reductions that occur later--then the CAA requires such measures to be in the SIP.

identify appropriate controls which will provide for attainment throughout the multi-State area. The EPA believes that the wording in sections 172(c)(1) and 182(b)(1)(A)(i) require the State to develop a plan providing such emissions reductions. —States working together in a collaborative process could perform a comprehensive assessment of the impacts of all control measures being implemented in both the local and upwind areas. The analysis may show the extent to which the downwind area is dependent on upwind strategies while fully meeting its own requirements associated with its classification. And upwind areas may provide a comprehensive assessment of the impacts of all control measures being implemented on the downwind areas.

4. Other Options Considered.

The EPA considered a number of other options and approaches for addressing transport. These other options that were considered but are not being proposed are described in a separate document available in the docket.[25]

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[25]Additional Options Considered for "Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park,

H. How will EPA address transport of ground-level ozone and its precursors for rural nonattainment areas, multi-State nonattainment areas, areas affected by intrastate transport, and international transport?

1. Rural transport nonattainment areas.

Section 182(h) recognizes that the ozone problem in a rural transport area is almost entirely attributable to emissions from upwind areas. Therefore, the only requirements for the rural area are the minimal requirements specified for areas expected to attain within 3 years of designation, the assumption being that the controls in the upwind area will solve the remaining nonattainment problem in the rural transport area as well. In these cases, the timing for attainment will depend on the schedule for adoption and implementation of control measures in the upwind areas.

2. Multi-State Nonattainment Areas.

Section 182(j)(2) for multi-State nonattainment areas (i.e., portions of the nonattainment area lie in two or more States) recognizes that one State may not be able to demonstrate attainment for the portion of the nonattainment

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NC. January 2003.

area within its borders if other States containing the remaining portions of the nonattainment area do not adopt and submit the necessary attainment plan for their portions of the nonattainment area. In such cases, even though the area as a whole would not be able to demonstrate attainment, the sanction provisions of section 179 shall not apply in the portion of the nonattainment area located in a State that submitted an attainment plan.

Section 182(j) defines a multi-State ozone nonattainment area as an ozone nonattainment area, portions of which lie in two or more States. Section 182(j)(1)(A) and (B) set certain requirements for such areas. First, each State in which a multi-State ozone nonattainment area lies, must take all reasonable steps to coordinate the implementation of the required revisions to SIPs for the given nonattainment area [section 182(j)(1)(A)]. Next, section 182(j)(1)(B) requires the States to use photochemical grid modeling or any other equally effective analytical method approved by EPA for demonstrating attainment. The EPA is prevented by section 182(j) from approving any SIP revision submitted under that section if a State has failed to meet the above requirements.

Pursuant to section 182(j)(1)(A), States that include

portions of a multi-State ozone nonattainment area are required to develop a joint work plan as evidence of early cooperation and integration. The work plan should include a schedule for developing the emissions inventories, and the attainment demonstration for the entire multi-State area. Each State within a multi-State ozone nonattainment area is responsible for meeting all the requirements relevant to the given area. Care should be taken to coordinate strategies and assumptions in a modeled area with those in other, nearby modeled areas in order to ensure that consistent, plausible strategies are developed.

3. Intrastate transport

Several State air agency representatives have voiced a concern about intrastate transport of ozone and precursor emissions and have asked EPA to address this concern. One State, for instance, notes that it has upwind areas that are affecting downwind areas and in some cases may be preventing a downwind area from attaining the standard by its statutory date.

The EPA believes that the CAA requires individual States, as an initial matter, to deal with intrastate transport. The EPA realizes that some States are structured with semi-autonomous local air agencies that are empowered

to address major elements of the SIP process, including preparation of the attainment demonstration. In those situations, the CAA provides that the State retain sufficient backstop authority to ensure all areas within its borders reach attainment, (110(a)(2)(E)). A State could, of course, recommend designation of nonattainment areas that are large enough to encompass upwind and downwind areas of the State and require that the individual jurisdictions work together on an attainment plan that accounts for transport and results in attainment by the attainment date for the entire nonattainment area. Or a State could require the individual agencies to work together in the same manner as multi-State organizations. In this case, there would be separate nonattainment areas with independent agencies expected to work together to address transport among the nonattainment areas. To facilitate this process, the State could require the agencies to sign a memorandum of agreement which describes the technical and administrative approach for performing the modeling analysis and identifying the appropriate controls measures. Upon a State's request, EPA would be willing to provide support for these activities.

The EPA also solicits comments on other ways of addressing intrastate transport within the context of the

Clean Air Act provisions.

4. International Transport.

a. International Transboundary Transport. International transboundary transport of ozone and ozone precursors can contribute to exceedances of the NAAQS. It is likely that the international transport of air pollutants will affect the ability of some areas to attain and maintain the 8-hour ozone NAAQS. As States and EPA implement control strategies and national emission reduction programs, the impact of high background levels emanating from outside the U.S. may play a larger role in future attainment demonstrations. The EPA has developed an information document on "International Transboundary Influences and Meeting the NAAQS," which is located in the Docket to this proposed rulemaking. This document provides information on efforts with Canada and Mexico to address transboundary air pollution as well as additional information for intercontinental modeling work currently underway within EPA.

b. Section 179B and the SIP approval process. Section 179B of the CAA (International Border Areas), applies to nonattainment areas that are affected by emissions emanating from outside the United States. This section requires EPA to approve a SIP for a nonattainment area if: it meets all

of the requirements applicable under the CAA, other than a requirement that the area demonstrate attainment and maintenance of the ozone NAAQS by the applicable attainment date; and the affected State establishes to EPA's satisfaction that the SIP would be adequate to attain and maintain the ozone NAAQS by the applicable attainment date but for emissions emanating from outside the United States. Further, any State that establishes to the satisfaction of EPA that the State would have attained the 8-hour ozone NAAQS, but for emissions emanating from outside the U.S., would not be subject to the attainment date extension provided in section 181(a)(5), the fee provisions of section 185, and the bump-up provisions for failure to attain for 8-hour ozone NAAQS specified in section 181(b)(2).[26]

In demonstrating that an area could attain the 8-hour ozone NAAQS but for emissions emanating from outside the U.S., approved EPA modeling techniques should be used to the best extent practicable. An emission inventory incorporating vehicle emissions released in the U.S. by foreign vehicles, i.e., those vehicles registered in the adjacent foreign country, must be completed by the States

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[26]The statute contains a typographical error referring to section 181(a)(2) instead of 181(b)(2).

before modeling the U.S. side only and attempting to demonstrate attainment.[27] The EPA recognizes that adequate data may not be available for mobile and stationary sources outside the United States. Therefore, modeling, per EPA's "modeling guidance" described elsewhere in the section on attainment demonstrations, may not be possible in all cases. Because very few areas are likely to be affected by this provision, EPA will determine on a case-by-case basis whether the State has satisfactorily made the required demonstration. The State is encouraged to consult with the EPA Regional Office in developing any alternate demonstration methods. Methods that the State may want to consider include: using ozone episodes that do not involve international transport of emissions for modeling (see guidance document entitled "Criteria for Assessing Role of Transported Ozone/Precursors in Ozone Nonattainment Areas"), running the model with boundary conditions that reflect general background concentrations on the U.S. side,

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[27]As noted elsewhere in this notice, the Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) has established basic emission inventory requirements for all areas of the country and generally requires periodic inventories of emissions that actually occur in the year of the inventory in the U.S. area of interest. This would include emissions from foreign-registered vehicles.

analyzing monitoring data if a dense network has been established, and using receptor modeling. States should confer with the appropriate EPA Regional Office to establish appropriate technical requirements for these analyses.

5. Additional ways of addressing transport

Additional approaches to address transport are discussed in the sections on classifications and RFP plans.

6. State-Tribal Transport

States have an obligation to notify Tribes as well as other States in advance of any public hearing(s) on their State plans that will significantly impact such jurisdictions. Under 40 CFR 51.102(6)(i), States must notify the affected States of hearings on their SIPs; this requirement extends to Tribes under 301(d) of the CAA and the TAR. 40 CFR Part 49. Therefore, affected Tribes that have achieved "treatment as States" status must be informed of the contents of such plans and the extent of documentation to support the plans. For example, in the case where the State models projected emissions and air quality under the SIP, the Tribes should be made aware of these modeling analyses. Tribes may wish to determine if the tribal area has been affected by upwind pollution and whether projected emissions from the tribal area have been

considered in the modeling analyses.

Generally, Tribal lands have few major sources, but in many cases, air quality in Indian country is affected by the transport--both long range and shorter distance transport--of pollutants. In many cases, Tribal nonattainment problems caused by upwind sources will not be solved by long-range transport policies, as the Tribes' geographic areas are small. Tribes are sovereign entities, and not political subdivisions of States. Strategies used for intrastate transport are not always available. Most of the strategies and policies used by States in dealing with short-range transport are not available to Tribes, e.g., requiring local governments to work together and expanding the area to include the upwind sources. Unlike Tribes, States can generally require local governments to work together, or make the nonattainment area big enough to cover contributing and affected areas. The EPA believes that it is also unfair to tribes to require disproportionate local regulatory efforts to compensate for upwind emissions. In many cases attainment could not be reached even if emissions from the Tribe were zero.

To address these concerns, EPA proposes to take comment on the following: EPA will review SIPs for their

effectiveness in preventing significant contributions to nonattainment in downwind Tribal areas with the same scrutiny it applies to reviewing SIPs with respect to impacts on downwind States. Where a Tribe has "treatment in the same manner as States," EPA will support the Tribe in reviewing upwind area SIPs during the State public comment period.

I. How will EPA address requirements for modeling and attainment demonstration SIPs when implementing the 8-hour ozone standard?

An attainment demonstration SIP consists of (1) technical analyses to locate and identify sources of emissions that are causing violations of the 8-hour NAAQS within nonattainment areas (i.e., analyses related to the emissions inventory required for the nonattainment area), (2) adopted measures with schedules for implementation and other means and techniques necessary and appropriate for attainment, (3) commitments, in some cases, to perform a mid-course review, and (4) contingency measures required under section 172(c)(9) of the CAA that can be implemented without further action by the State or the Administrator to cover emissions shortfalls in RFP plans and failures to attain. The EPA is soliciting public comment on the

following guidance. Associated with the attainment demonstration also are the RFP/ROP plans and the SIP submission concerning reasonably available control measures (RACM), for which EPA is proposing rules elsewhere in this proposal.

1. Multi-pollutant assessments (one-atmosphere modeling[28])

Many factors affecting formation and transport of secondary fine particles (i.e., $PM_{2.5}$ components) are the same as those affecting formation and transport of ozone. For example, similarities exist in sources of precursors for ozone and secondary fine particles. Sources of NO_x may lead to formation of ozone as well as nitrates which contribute to the formation of secondary fine particles. Sources of VOC may contribute to ozone formation and may also be sources or precursors for organic particles. Presence of ozone itself may be an important factor affecting secondary particle formation. As ozone builds up, so do hydroxyl (OH) radicals as a result of equilibrium reactions between ozone, water and OH^- in the presence of sunlight. OH radicals are

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[28]Use of models that are capable of simulating transport and formation of multiple pollutants simultaneously. For example for ozone and fine particles, it is critical that the model simulate photochemistry, which includes interactions among the pollutants and their precursors.

instrumental in oxidizing gas phase SO_2 to sulfuric acid, which is eventually absorbed by liquid aerosol and converted to particulate sulfate in the presence of ammonia. Therefore, strategies to reduce ozone can also affect formation of secondary fine particles which contribute to visibility impairment.

Therefore, models and data analysis intended to address visibility impairment need to be capable of simulating transport and formation of both secondary fine particles and ozone. At a minimum, modeling should include previously implemented or planned measures to reduce ozone, secondary fine particles, and visibility impairment. An integrated assessment of the impact controls have on ozone, secondary fine particles, and regional haze provides safeguards to ensure ozone controls will not preclude optimal controls for secondary fine particles and visibility impairment.

The concept of modeling control impacts on all three programs is further strengthened by the alignment of the implementation process for ozone and secondary fine particles. As the dates for attainment demonstration SIPs begin to coincide, the practicality of using common data bases and analysis tools for all three programs becomes more viable and encourages use of shared resources.

~~The EPA is taking comment on whether or not ozone attainment demonstrations should include~~States that undertake multi-pollutant assessments~~. If so, States~~ as part of their attainment demonstration would assess the impact of their ozone attainment strategies on secondary fine particles and visibility or perform a consistent analysis for ozone, secondary fine particles, and visibility. To facilitate ~~this~~such an effort, EPA would encourage States to work closely with established regional haze Regional Planning Organizations (RPOs) and the jurisdictions responsible for developing $PM_{2.5}$ implementation plans. Though the CSA, if enacted as introduced, would provide substantial improvement in air quality for ozone, $PM_{2.5}$ and visibility, States are encouraged to follow EPA's lead and perform similar multi-pollutant assessments as part of their ozone attainment demonstrations, considering the programs that are in place at the time of the assessment. Multi-pollutant assessments are discussed elsewhere in this proposed rulemaking.

2. Areas with early attainment dates

Under section 182(a), marginal areas, which have an attainment date of only 3 years after designation, are not